

Volume 6

Pages 771 - 945

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MARILYN HALL PATEL

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CR. 07-0765 MHP
	)	
MENDEL BEKER, ARIE PRILIK, and	)	
NEWCON INTERNATIONAL,	)	
	)	San Francisco, California
Defendants.	)	Wednesday
	)	January 19, 2011
	)	8:50 a.m.

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**TRANSCRIPT OF PROCEEDINGS**

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(Appearances continued on next page)

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**P R O C E E D I N G S**

January 19, 2011

8:50 a.m.

(Jury in at 8:50 a.m.)

(Witness resumes stand.)

**THE COURT:** You may be seated. Good morning, ladies and gentlemen.

**THE JURORS:** Good morning.

**THE COURT:** Enthusiastic group. Good.

Thank you. And I apologize. This was my fault; not the attorneys' or -- some other matters came up.

So, in any event, we are all ready to settle in and listen to some more testimony. We do have other witnesses besides Mr. Rocklin.

**MR. HOWDEN:** We may even get to them today.

**THE COURT:** We may even get to some of them.

Mr. Rocklin, I remind you, you are still under oath, and the oath will not be readministered.

Mr. Howden, you may proceed or continue.

**MR. HOWDEN:** Thank you, your Honor.

**CROSS-EXAMINATION RESUMED**

**BY MR. HOWDEN**

**Q.** Mr. Rocklin, I believe yesterday you mentioned at some point that, in fact, in about August of 2005, your suppliers were having some trouble with Russian Customs. Is that correct?

1 **A.** Yes.

2 **Q.** And at the time you began experiencing delays in receiving  
3 shipments from NPZ from Russia, do you know if NPZ had an  
4 export license for the goggles they were shipping you?

5 **A.** I am not aware of that.

6 **Q.** You don't know if they did, or not?

7 **A.** I don't know if they did, or not.

8 **Q.** Okay. And did ATN -- was it -- did Russian Customs  
9 require ATN to have any kind of export license, so that you  
10 could import the goggles from Russia to the United States?

11 **A.** No.

12 **Q.** Isn't it true that the Russian Customs service contended  
13 that the goggles that were being shipped to ATN did require an  
14 export license?

15 **MS. HAMILTON:** Objection, your Honor. This is --  
16 there's no foundation for this question.

17 **THE COURT:** Objection is sustained.

18 You'd have to lay a foundation.

19 **BY MR. HOWDEN**

20 **Q.** Are you aware of the nature of the customs dispute that  
21 NPZ had with Russian Customs?

22 **A.** I know that one of the shipments was held.

23 I don't know all the details; why it was held.

24 **Q.** Were you aware that NPZ ended up getting into a series of  
25 lawsuits with Russian Customs?

1           **MS. HAMILTON:** Objection, your Honor. Calls for  
2 speculation.

3           **MR. HOWDEN:** I'm asking him if he was aware.

4           **THE COURT:** And what is the relevance of it?

5           **MR. HOWDEN:** Well, I'm trying to establish that he  
6 was aware of the actual reason why his shipments were delayed  
7 from Russia. He's already try to lay it at somebody else's  
8 feet.

9           **THE COURT:** Well, why don't you ask the him the  
10 question: What the reason was, if he knows.

11           First of all, I mean, the jury -- you know, you're  
12 asking the questions. And I've instructed the jury they're not  
13 to assume anything from the, you know, facts contained in the  
14 question. It depends upon the answer.

15           So there are other ways of positing the question,  
16 without making it sound as if that is, in fact, the fact.

17           **MR. HOWDEN:** I'll try again, your Honor.

18 **Q.** Do you know why Russian Customs delayed the NPZ shipment  
19 of goggles to ATN?

20 **A.** To my knowledge, it was stopped because of the corrupt  
21 customs officials in Novosibirsk.

22 **Q.** And what's the basis of your knowledge?

23 **A.** That's what NPZ was telling Lenny, and Lenny was telling  
24 me.

25           (Reporter requests clarification)

1           **THE WITNESS:** Lenny Gaber, because he was in charge  
2 of communicating with the factory.

3 **BY MR. HOWDEN**

4 **Q.** Third-hand hearsay. Is that correct?

5 **A.** I don't know what third-hand hearsay is; but again, the  
6 information was from Lenny, that he got from NPZ.

7           **MR. HOWDEN:** Your Honor, I'd ask that that answer be  
8 struck regarding the reason for --

9           **THE COURT:** You asked. You wanted to find out how he  
10 knew, and -- and --

11           **MR. HOWDEN:** Right. And I also wanted to explore  
12 whatever else he knew about the nature of it. I wanted to ask  
13 him about the --

14           **THE COURT:** And the jury is -- you are instructed  
15 that hearsay -- this is, essentially, what is referred to as  
16 "hearsay." You understand it. And it cannot be offered for  
17 the truth of the matter. And that's what it's being offered  
18 for. And so the answer is stricken, and you're to disregard  
19 it.

20 **BY MR. HOWDEN**

21 **Q.** And the fact of matter is you, yourself, never spoke  
22 directly to NPZ about the -- the reasons for the delay in their  
23 shipments?

24 **A.** No, I did not.

25 **Q.** Everything you know, you know from somebody else?

1 **A.** Yes.

2 **Q.** Did you have any direct communications with anyone from  
3 Russian Customs about the delay in your shipments?

4 **A.** No, I did not.

5 **Q.** And -- and, as I understand your testimony here today, the  
6 only delay that -- that you've identified is -- is this one  
7 delay in a shipment of 350 goggles. Is that correct?

8 **A.** Yes.

9 **Q.** Now, I want to turn to the -- the series of recorded  
10 telephone calls that you had with Mr. Prilik and -- and  
11 Mr. Beker.

12 We've listened to those calls. The vast majority of those  
13 calls are in Russian, correct?

14 **A.** Yes.

15 **Q.** And did the FBI give you any instruction as to whether to  
16 conduct the conversations in Russian, as opposed to English?

17 **A.** No, I don't recall any instructions like that.

18 **Q.** Did you make any effort that you considered speaking to  
19 Mr. Prilik, for instance, in English in those calls?

20 **A.** Sometimes I switched to English.

21 **Q.** Okay, but the vast majority of it's in Russian. Why  
22 didn't you -- why didn't you attempt to speak to him in  
23 English?

24 **A.** Because from the past conversation, it was common that we  
25 would speak Russian.

1 Q. Okay. And in your conversations with Mr. Beker -- those  
2 also were in Russian. Was there a particular reason those  
3 conversations were in Russian?

4 A. Again, past conversations were in Russian, so --

5 Q. By --

6 A. And this conversation was representative of those other  
7 conversations.

8 Q. And, by "past conversations," you're referring to those  
9 once or twice a year, when you would see Mr. Beker at a trade  
10 show?

11 A. Yes.

12 Q. Now, the first telephone call that you recorded was with  
13 Mr. Prilik. Is that right?

14 A. Yes.

15 Q. And that was on August 26th, 2005?

16 A. Yes.

17 Q. That was -- what? Nine days after your last conversation  
18 with him, on August 17th?

19 A. Yes.

20 Q. And during that nine-day period of time, neither  
21 Mr. Prilik nor Mr. Beker had called you?

22 A. No.

23 Q. And you received the -- the tape-recorder and the cassette  
24 tapes from the FBI on -- what? -- the 24th of August?

25 A. I think that was the day.



1 Q. And so, two days later, you called Newcon? Is that right?

2 A. Yes.

3 Q. Now, I'd like to take you through part of this transcript.

4 Could we go to page 2? And, directing your attention to

5 line 16, you stated,

6 "When we were speaking last time."

7 Were you referring to the 17th there?

8 A. Yes.

9 Q. And you said to Mr. Prilik,

10 "And obviously, when things, as they

11 say in Russia, don't get any better" --

12 You were referring to the delay in your shipments by

13 Russian Customs. Isn't that right?

14 A. Yes.

15 Q. If we could go to page 4. And then, on page 4, at line

16 15, you'd been discussing with Mr. Prilik different ideas. And

17 he said,

18 "I can give my unofficial -- yes,

19 unofficial opinion, because the official

20 opinion is reserved for the boss with us."

21 And you understood "the boss" to be Mr. Beker,

22 correct?

23 A. Yes.

24 Q. And that what Mr. Prilik was telling you was his personal

25 opinion?

1 **A.** Yes.

2 **Q.** Let's go to page 5. And at line 5 you say,

3 "Yes. There are enough difficulties.

4 This is for sure. Between TACOM and

5 Russia, I have this headache."

6 And again, you were discussing, at least in general

7 terms, problems you were having with your contract supplying

8 ITE with night-vision goggles. Isn't that correct?

9 **A.** Yes.

10 **Q.** And -- and your problems didn't just include

11 Russian Customs. It also included TACOM. Isn't that correct?

12 **A.** Yes.

13 **Q.** And Mr. Prilik responded to you at -- beginning at

14 line 12. Well, he's talking about "the boss." And you

15 understood that to be Mr. Beker, correct?

16 **A.** Yes.

17 **Q.** (Reading)

18 "He'll be trying to make obstacles if

19 he knows, well, that you don't have the 750

20 FOM, or he thinks that he knows, he'll be

21 trumpeting about this wherever he can."

22 And you understood, Mr. Prilik was talking about whether

23 or not ATN had met the FOM requirement in the contract. Isn't

24 that correct?

25 **A.** Yes, but later on Michael, himself, refers to this as a

1 slander to TACOM.

2 Q. Okay. Thank you again.

3 A. You're welcome.

4 Q. And what he's -- he's saying to you -- what you understood  
5 him to be saying was that Mr. Beker was going to continue to,  
6 in your words, slander you regarding allegations that ATN could  
7 not meet the 750 FOM requirement in the contract, right?

8 A. It's in his words; not in my words.

9 Q. Okay, but that's what Mr. Prilik is saying here. Isn't  
10 that correct?

11 A. Yes.

12 Q. And at least at this juncture, you don't deny that  
13 that's -- that's one of the problems that you're having. Is  
14 that correct?

15 A. I was not there to volunteer information.

16 Q. Or to respond to Mr. Prilik's statements?

17 A. I was responding, but I did not, I guess, comment on a  
18 that fact here?

19 Q. Okay. You didn't contest Mr. Prilik's allegation that you  
20 guys were having problems with the 750 FOM. Isn't that  
21 correct?

22 A. No.

23 MR. HOWDEN: Let's go to page 10.

24 Q. Page 10 -- we'll start with line 1, but you say,

25 "Let me put it this way. Especially

1           with the way things are going right now --  
2           I'll be honest with you -- I'm not making  
3           this call because my life is so good. And  
4           honestly, I simply was very busy."

5           Your life wasn't so good right then, because you were  
6   having problems with the contract, right?

7   **A.**   Yes. And the problems were instigated, in my opinion, by  
8   Newcon.

9   **Q.**   Okay. And so you called Newcon about your problems?

10   **A.**   And they confirmed that they were instigating those  
11   problems.

12   **Q.**   They did that back on the 17th, according to you. Isn't  
13   that right?

14   **A.**   On the 17th. More specifically, I recall Michael saying  
15   that he confirmed that he was the one who complained to TACOM.

16           And, in the broader sense, it was, "I'll do everything to  
17   stop this contract from continuing."

18   **Q.**   And so now, on the 26th, you've called them again. And  
19   you've let them know you're unhappy because you're still having  
20   problems with the contract. Is that correct?

21   **A.**   Yes.

22   **Q.**   And the reason that you called them is that you were  
23   looking for some sort of solution to your problems. Isn't that  
24   right?

25   **A.**   No.

1 Q. Let's go to page 12. At line 10, Mr. Prilik said,  
2 "Yes. Getting back to our issues" --  
3 And what were your issues back on August 26th?

4 A. I think here, he's just coming back to the subject of the  
5 Battalion Set II.

6 Q. So the issues related to Battalion Set II, right?

7 A. Yes.

8 Q. And Mr. Prilik made a proposal to you, or floated an idea  
9 by you. He said,

10 "I don't think that one could do a  
11 legal arrangement for two companies to  
12 deliver the devices. This is my personal  
13 opinion. This, neither -- the main  
14 contractor" --

15 That being ITE.

16 -- "wouldn't want this headache, nor  
17 TACOM would want this headache. Also, I  
18 don't think we that want to see two models  
19 in one order."

20 Now, you understood that -- that he was floating an idea  
21 about two companies supplying goggles to ITE. Isn't that  
22 right?

23 A. No.

24 What he was saying here is that he didn't think that that  
25 would be possible.

1 Q. But that's the general idea that he was discussing: The  
2 idea of two companies supplying goggles to ITE. Isn't that  
3 right?

4 A. And he didn't believe that it was a valuable idea.

5 Q. Okay. Okay, but the point is that was the idea that he  
6 didn't think would work out: Having two companies supplying  
7 goggles to ITE, right?

8 A. Yes.

9 Q. And you, in fact, respond that,  
10 "Well, I don't know. In fact, I think  
11 they care about it least of all -- they  
12 need it now. You know, get the product  
13 there."

14 And the "they" you're referring to is TACOM, correct?

15 A. Yes.

16 Q. And the point you're making is that they want the goggles  
17 now, correct?

18 A. Later on, I'm making a point that --

19 Q. I'm asking you about this now, please, Mr. Rocklin. Could  
20 you answer my question?

21 A. Yes.

22 And lower there, I'm stating there were two models  
23 delivered were delivered already.

24 (Reporter requests clarification)

25 **THE WITNESS:** Were delivered already, at that time.

1 **BY MR. HOWDEN**

2 **Q.** And by the "two models," you're referring to the models  
3 that TACOM [sic] delivered under Battalion Set I -- excuse me.  
4 Not TACOM -- Newcon delivered under Battalion Set I. Is that  
5 correct?

6 **A.** Yes.

7 **Q.** And the model that ATN was delivering under  
8 Battalion Set II?

9 **A.** Yes.

10 **Q.** An the point, you were trying to make to Mr. Prilik was  
11 that, gee, in your view, TACOM wouldn't necessarily look down  
12 their nose at the idea of two companies supplying goggles for  
13 one contract. Isn't that right?

14 **A.** Would you repeat the question?

15 **Q.** Sure. The point you were trying to make to Mr. Prilik was  
16 that you disagreed with his -- with -- with his negative view  
17 of two companies supplying goggles to TACOM. Isn't that right?  
18 You thought it could be done?

19 **A.** That was not a discussion here.

20 **Q.** Well, you were pointing out to him that, in fact, two  
21 companies were supplying goggles to TACOM under -- under two  
22 separate contracts, right?

23 **A.** Yes.

24 **Q.** So that TACOM was already receiving two different models  
25 of night-vision goggles, correct?

1 **A.** Yes.

2 **Q.** And, in fact, on the next page, on page 13 at line 5 and  
3 6, you elaborate on that just a little bit. You say that,

4 "Nobody says, well, for them to be  
5 interchangeable and all that."

6 And the point you were making was that, in  
7 Battalion Set II, TACOM could have specified, essentially,  
8 interchangeable goggles with those supplied under  
9 Battalion Set I, but they didn't, right?

10 **A.** Correct.

11 **Q.** And then you and Mr. Prilik have some further discussion.  
12 And at the bottom of page 13, line 23, you say,

13 "I just want to -- my problems to be  
14 solved."

15 And again, the problems you were referring to were  
16 your problems with the contract. Isn't that right?

17 **A.** Arie made overtures with offers how to solve this in the  
18 business. He had a business idea on how to solve it, and how  
19 to pacify the situation. That's what I was here referring to.

20 **Q.** The problems you were referring to were your problems with  
21 the contract. Isn't that correct?

22 **A.** Yes.

23 **Q.** And you were looking for a solution to those problems,  
24 right?

25 **A.** Not from Newcon.



1 Q. But you're talking to Mr. Prilik about looking for a  
2 solution. Isn't that correct?

3 A. Yes. I'm playing along in the conversation.

4 Q. Well, whether you were playing along or not, the point is  
5 you were talking to Arie Prilik, looking for a solution to your  
6 problems. Isn't that right?

7 A. Yes.

8 Q. And on the next page, at lines 1 and 2, you say to  
9 Mr. Prilik,

10 "And we can come to an agreement.

11 Whatever."

12 And the agreement you were looking for was an  
13 agreement that would solve your problems. Isn't that correct?

14 A. Arie made an -- some sort of proposal. And we were  
15 discussing it here.

16 Now, all I was doing is playing along. I was saying that  
17 whatever you propose, I'm open to hear. And if we can come to  
18 the agreement, I'd like to hear.

19 Q. And I understand you say you were playing along.

20 You were looking for Arie to say something incriminating,  
21 right?

22 A. I did not ask him to say something incriminating.

23 Q. But that's why you were playing along? That's what you  
24 were looking for?

25 A. I was having conversation at the direction of FBI. And

1 they were telling me to play along.

2 Q. Okay. And in the course of playing along, you proposed  
3 that you could reach an agreement with Mr. Prilik. Isn't that  
4 right?

5 A. I was agreeing on it; not proposing anything.

6 Q. Well, in this conversation did Mr. Prilik propose an  
7 agreement?

8 A. I think the agreement was offer on the second conversation  
9 with Arie on August 17th.

10 Q. Oh. So you were referring back to that earlier  
11 conversation?

12 A. Yes.

13 Q. But in this conversation, you're the one who raised the  
14 idea of an agreement. Isn't that right?

15 A. It was a discussion about Battalion Set II. And it was --  
16 the idea of the agreement -- it was not my idea.

17 Q. In this conversation, this is the first time that an  
18 agreement is suggested. Isn't that correct?

19 A. I don't remember whether it was the first time in this  
20 conversation, or not.

21 Q. Briefly, let's look at page 16. You have further  
22 conversation with Mr. Prilik. And on page 16 he -- he mentions  
23 to you that,

24 -- "as a very -- as one simplistic  
25 possibility."

1 In this conversation, Mr. Prilik was floating ideas by  
2 you. Isn't that correct?

3 **A.** Yes.

4 **Q.** And on the next page -- page 17 -- Mr. Prilik said,

5 "Even if we are to proceed from this  
6 working price, one could boost it for him  
7 up to the limit: 1,798. What choice does  
8 he have, may I ask?"

9 Who's the "him" he's referring to?

10 **A.** At this point, our conversation involving this scenario  
11 was to raise the price to ITE.

12 **Q.** To ITE?

13 **A.** Yes.

14 **Q.** In other words, take away his profit margin?

15 **A.** Yes.

16 **Q.** Okay. And on the next page, page 18, beginning at line 6,  
17 he says,

18 "Well, let's examine the possibilities.

19 Let's say the first possibility is Dima  
20 would boost it for him till \$1,798, and he  
21 won't make money on this, or will make the  
22 minimum."

23 Again, the "him" there is ITE?

24 **A.** Yes.

25 **Q.** And he goes on.

1 "He has an option to refuse to deliver  
2 it. He can't take it, because then he  
3 would destroy his entire contract, because  
4 don't forget: The night vision is  
5 approximately 25 percent of it all."

6 And again, he's referring to ITE. Isn't that correct?

7 **A.** Yes.

8 **Q.** And then he goes on.

9 "He has an option to swallow it, and to  
10 rage, and to tell Dima how bad he is."

11 And again, he's talking about ITE there. Isn't that  
12 correct?

13 **A.** Yes.

14 **Q.** Going on to the next page, page 19, Mr. Prilik goes on.

15 "What other options" --

16 Starting at line 6,

17 "What other options does he have? He  
18 has an option. Excuse me. That's none of  
19 my damn business, but if he makes money on  
20 Tommy guns and radios, well, then, he will  
21 move aside a little bit."

22 And again, Mr. Prilik is referring to ITE. Isn't  
23 that correct?

24 **A.** Yes.

25 **Q.** And what he's saying is that ITE still can -- has a profit

1 margin on the weapons and the communications equipment in the  
2 contract, right?

3 **A.** Yes.

4 **Q.** And then he goes on.

5 "Okay. Let's examine this further.

6 The worst case, he would say, 'No, I don't  
7 want to.' And what would happen? He  
8 simply wouldn't deliver it in full, right?"

9 And again, he's referring to ITE, right?

10 **A.** Yes.

11 **Q.** That ITE has an option of defaulting on that part of the  
12 contract, right?

13 **A.** Yes.

14 **Q.** And he goes on and says,

15 "And the Americans would swallow it."

16 And when he says, "the Americans would swallow it,"  
17 there hasn't been any reference to higher prices to TACOM at  
18 that point. Is that correct?

19 **A.** Well, if he would increase the price, assuming that ITE  
20 would be selling it at \$1,800 -- that's the subject of the  
21 conversation.

22 **MR. HOWDEN:** Your Honor, I object. This is  
23 nonresponsive. And it's not -- and he's volunteering, and not  
24 answering the question.

25 **THE COURT:** I'll strike the answer. Try it again.

1           **MR. HOWDEN:** All right.

2           **THE COURT:** The jury is instructed to disregard the  
3 answer.

4 **BY MR. HOWDEN**

5 **Q.** At this point, when Mr. Prilik says, "and the Americans  
6 would swallow it," he hasn't mentioned anything about raising  
7 prices to TACOM. Isn't that correct?

8 **A.** At this point, no.

9 **Q.** And, in fact, what he is talking about is ITE defaulting  
10 on a portion of the contract, right?

11 **A.** That was one of the scenarios.

12 **Q.** That's what the Americans would have to swallow?

13 **A.** Yes.

14 **Q.** Now, at no point during this conversation did Mr. Prilik  
15 say that -- in any of these proposals -- that a higher price  
16 should be charged to TACOM. Isn't that correct?

17 **A.** Do you have a -- I need to see them on -- the later part  
18 of this conversation. I think there was a discussion.

19           **MS. HAMILTON:** (Indicating)

20           **MR. HOWDEN:** Is this all of the transcripts?

21           **MS. HAMILTON:** It's all of the transcripts.

22           **MR. HOWDEN:** What exhibit is this?

23           **MS. HAMILTON:** It's 101. 131. 131 is the actual  
24 transcript.

25           **MR. HOWDEN:** 131. Okay.

1 Q. Showing you Exhibit 131, take a look at it, please.

2 A. No.

3 Q. Let's turn to the second conversation. And -- and this  
4 second conversation -- it also occurred on August 26th, later  
5 that same day?

6 A. Yes.

7 Q. Directing your attention to page 3, beginning at -- at  
8 line 8, going through line 10, Mr. Prilik told you that Michael  
9 basically said that, ah, he doesn't want to burn the bridges.  
10 He's willing to talk.

11 And you responded,

12 "What doesn't he want to do? I didn't  
13 get it."

14 And Mr. Prilik said, again,

15 "No. He doesn't want to burn the  
16 bridges that he -- yes, he is willing to  
17 talk and meet, ah, along the lines of my  
18 proposal, or something close to it, ah, but  
19 the best thing to do, in order to make it  
20 specific, is perhaps for Marc to get in  
21 touch with him. He'll be back in his  
22 office on Monday for them to schedule a  
23 meet somewhere."

24 Now, "Marc" was Marc Morgovsky?

25 A. Yes.

1 Q. And he was your boss. Is that correct?

2 A. Yes.

3 Q. And in this conversation, Mr. Prilik isn't floating any  
4 additional ideas by you at this point, right?

5 A. No.

6 Q. He's just telling you that Michael is willing to talk to  
7 you?

8 A. Yes.

9 Q. And again, in this conversation, there's no suggestion  
10 that Newcon or ATN should increase its prices to TACOM. Isn't  
11 that right?

12 A. Not at this point.

13 Q. Okay. Let's go to the third conversation. You called  
14 Newcon and recorded this call on or about August 29, 2005. Is  
15 that correct?

16 A. Yes.

17 Q. And again, in this call, you spoke to Arie Prilik?

18 A. Yes.

19 Q. Let's go to page 2, at the bottom of page 2, lines 23 and  
20 24. And it carries over to page 3. And Mr. Prilik told you  
21 that he talked to Mr. Beker, and he is trying to ascertain for  
22 himself what -- what to talk about.

23 He was telling you that Mr. Beker wants to know what you  
24 want to talk about. Isn't that right?

25 A. Yes.



1 More specifically, he is asking what constitutes the idea.

2 Q. Right. Let's go on to the next page. We'll go over that.

3 Mr. Prilik goes on.

4 "What constitute the idea? What  
5 constitutes the offer? What constitutes  
6 the request?"

7 So Mr. Prilik was telling you that Mr. Beker wanted  
8 to know what your proposal was. Isn't that right?

9 A. Yes.

10 Q. And in response you said, at lines 7 and 8,

11 "The contracts. And I have  
12 difficulties with them."

13 Correct?

14 A. Could you go back for a second?

15 Q. Sure.

16 A. No. In response to that, there is, at line 3?

17 "Well, the requests. The ideas. You  
18 gave them, yourself."

19 That's the answer --

20 Q. Okay.

21 A. -- to that response.

22 Q. You told Mr. Prilik that you wanted to hear Mr. Prilik's  
23 idea, right?

24 A. No. I was saying here that the ideas were Mr. Prilik's  
25 ideas; not mine.

1 Q. Oh. And then you went on and you said,

2 "The contracts. I have difficulties  
3 with them."

4 Right?

5 A. Yes.

6 Q. And again, in -- your idea in talking to Newcon was to  
7 find solutions to your difficulties. Isn't that right?

8 A. We discussed this before. And, back to the question, the  
9 thing that was important for Michael is that I would ask for  
10 help. And I made a point not to ask for help.

11 Q. But in the very next line, you did tell Mr. Prilik,

12 "And as far as I understand, you had  
13 some ideas how to resolve it."

14 Right?

15 A. Yes.

16 Q. Resolve the problems that you were having with the  
17 contract.

18 A. But I'm not asking for help.

19 Q. Okay. And -- and then you go on. At lines 16 and 17, you  
20 say to Mr. Mr. Prilik,

21 "If there is a business solution."

22 You were looking for a business solution to your  
23 problem.

24 A. I was speaking with Mr. Prilik's words back to him,  
25 because he referred in the past conversation to this as a

1 "business solution."

2 Q. Okay. And you're asking him for that business solution.  
3 Isn't that right?

4 A. No. What I'm saying is, if there is a business solution,  
5 I'm willing to listen to it.

6 Q. And then Mr. Prilik says to you,

7 "When you talk about the problems, we  
8 are talking about the problems of the  
9 administration nature, or the production,  
10 or both?"

11 And what he was asking you is: What was the nature  
12 of the problems you were having with the contract? Right?

13 A. Yes.

14 Q. Were they administrative problems? Were they production  
15 problems? Correct?

16 A. In this case, the reference of administration problems --  
17 my understanding was the conversation about complaints to TACOM  
18 and the production problems or delivery problems from Russia.

19 Q. Okay, but the point is: Mr. Prilik is asking you about  
20 the nature of your problems with the contract. Right?

21 A. Yes.

22 Q. And -- and you respond both, but you, yourself, probably  
23 know everything.

24 So you were admitting to him that you were having  
25 different kinds of problems with the contract, correct?

1 **A.** Yes.

2 **Q.** And then you go on and elaborate a little bit about the  
3 nature of those problems. At line 24 you begin,

4 "Well, there is the TACOM."

5 And then it continues to page 4.

6 "The TACOM pressures from one side up  
7 to kazoo. And in Russia, they cut off  
8 everything. Nothing is coming out."

9 So you were having problems. You told Mr. Prilik you were  
10 having problems with both TACOM, and exports from Russia,  
11 right?

12 **A.** Right, but in my first conversation on August 17th,  
13 Michael mentioned something to the extent that, "I can  
14 guarantee you that nothing will come out from Russia."

15 **Q.** That's the 17th? The unrecorded call?

16 **A.** Yes.

17 **Q.** And Mr. Prilik goes on. He asks you, at line 6 and line 7  
18 of page 4,

19 "The TACOM pressure is in terms of the  
20 quality, or in terms of the deliveries?"

21 Right?

22 **A.** Yes.

23 **Q.** He wants to know what kind of problems you're having with  
24 TACOM, correct?

25 **A.** He's trying -- he was trying to fish out as much

1 information as possible.

2 **Q.** The question he was asking was: What kind of problems are  
3 you having with TACOM? Isn't that correct?

4 **A.** Yes. That was the question.

5 **Q.** And you respond to him,

6 "Well, what am I to tell you?

7 Naturally, if nothing is coming out, then  
8 it's in terms of the deliveries.

9 In terms of the quality, you, as a  
10 creator, you most likely know everything."

11 So you told him that you were having -- TACOM was  
12 giving you problems because you were having deliveries issues  
13 on the contract. Is that correct?

14 **A.** No. What I was telling him here -- well, the part was the  
15 delivery. And I was saying here that Newcon was a creator of  
16 those problems. And he's not denying it.

17 **Q.** Okay. And then you go on.

18 "In terms of the quality, as you  
19 know" --

20 Or,

21 "In terms of the quality, you, as a  
22 creator, you most likely know everything."

23 What were your quality problems with TACOM?

24 **A.** The Newcon complained that our unit did not meet 750 FOM.

25 **Q.** Okay. And what did you care, if -- if Newcon complained

1 to TACOM about the quality of your product?

2 **A.** TACOM responded to that complaints.

3 **Q.** And how did they respond to those complaints?

4 **A.** A number of units were recalled from Iraq, and tested in  
5 the Night Vision Labs.

6 **Q.** When, approximately, did that occur?

7 **A.** In June of 2005.

8 **Q.** And in June of 2005, did TACOM inform you or anyone else  
9 at ATN what the results of those tests were?

10 **A.** Yes.

11 **Q.** And what were the results of the tests?

12 By the way, who conducted those tests?

13 **MS. HAMILTON:** Your Honor, this is not relevant. In  
14 terms of the testing and what the result were, I would argue  
15 this is not relevant.

16 **MR. HOWDEN:** Well, I think it's directly relevant,  
17 your Honor.

18 **THE COURT:** The objection is overruled.

19 But which question are you asking? You asked two of  
20 them there.

21 **MR. HOWDEN:** The question that's pending? If he  
22 knows who actually tested them.

23 **THE COURT:** Okay. That was the last one you asked.  
24 There was -- you slipped in two of them there.

25 **MR. HOWDEN:** I'm just asking the last one.

1           **THE COURT:** We'll take one. Okay?

2           **MR. HOWDEN:** There we go.

3           **THE COURT:** Yes.

4           **THE WITNESS:** My understanding -- the Night Vision  
5 Labs were testing them.

6 **BY MR. HOWDEN**

7 **Q.** The Army's Night Vision Labs?

8 **A.** Yes.

9 **Q.** And did you see the results of their tests?

10 **A.** Yes.

11 **Q.** And what were the results of their tests?

12 **A.** The initial result that were there that we did not meet  
13 750 FOM.

14 **Q.** And was there a second round of tests conducted by the  
15 Night Vision Labs?

16 **A.** Yes.

17 **Q.** And that again was of ITN [sic] image -- ATN  
18 image-intensifier tubes?

19           Excuse me. Too many letters in the alphabet here.

20 **A.** Right. It -- are we talking about the tubes that ATN  
21 delivered?

22 **Q.** Yes.

23 **A.** Yes.

24 **Q.** And what were the results of that second round of testing  
25 by the Night Vision Labs?

1 **A.** The second round of testing also found that FOM was not  
2 met to 750, but also attributed the findings to the differences  
3 in testing procedures in Russia and Army lab.

4 **Q.** And, in point of fact, despite the fact that the ATN  
5 image-intensifier tubes failed two tests by the Night Vision  
6 Laboratory, TACOM decided to keep accepting your night-vision  
7 equipment anyway. Is that right?

8 **A.** Again, they, at one point, issued a stop-work order; then  
9 tested it; then attributed the differences in findings to  
10 differences in testing procedures in Russia and U.S.

11 My understanding also --

12 **Q.** Well, I'm not asking for your understanding. Let me ask  
13 you another question.

14 Did ATN's image-intensifier tubes ever meet the  
15 specifications in the Battalion Set II contract, according to  
16 the Night Vision Laboratory?

17 **MS. HAMILTON:** Objection, your Honor. That's  
18 speculative, because the witness has already answered the  
19 question.

20 **THE COURT:** I think he's answered the factual  
21 questions.

22 **MR. HOWDEN:** Very good.

23 **Q.** And so you were permitted -- you, ATN, were permitted to  
24 continue providing goggles to the Army under the contract,  
25 right?



1 A. Yes.

2 Q. And Mr. Prilik goes on in this conversation, and -- and  
3 says,

4 "No. We need to understand, because  
5 any solution -- it depends, because, for  
6 instance, if it's the quality that they are  
7 totally dissatisfied with, this is one  
8 scenario. If the only problem is with  
9 deliveries, and they would eat any quality.  
10 This is another scenario. That is why I'm  
11 asking."

12 Now, you understood that Mr. Prilik was trying to get you  
13 to -- to flesh out the nature of your problem, because any  
14 proposal he could make to you for a solution depended on the  
15 nature of the problem. Isn't that right?

16 A. Yes.

17 Q. And -- and the last two lines on that page, in response to  
18 Mr. Prilik's inquiry about the nature of the problem, you said,

19 "That is to say, ah, I think that at  
20 the moment, they are satisfied with the  
21 quality."

22 The "they" being TACOM. Is that correct?

23 A. Yes.

24 Q. You didn't tell Mr. Prilik about these testing issues  
25 that -- that you'd had in June with TACOM, right?

1 **A.** No, I did not.

2 **Q.** And do you know if -- if TACOM ever informed anyone at  
3 Newcon about those test results?

4 **MS. HAMILTON:** Your Honor, that calls for  
5 speculation.

6 **MR. HOWDEN:** Well, I'm asking if he knows.

7 **THE COURT:** Ask him if he knows. Then he may -- that  
8 question is to be a "Yes" or "No."

9 **THE WITNESS:** No, I did not know.

10 **BY MR. HOWDEN**

11 **Q.** Okay. Directing your attention to page 5, last three  
12 lines, 22 through 24, you told Mr. Prilik,

13 "You told me then whatever, well, ideas  
14 you had, they are not official; therefore,  
15 I cannot act upon them."

16 So you understood that what Mr. Prilik had been  
17 discussing with you up to this point had been his personal  
18 opinion?

19 **A.** I understood that he had a discussion with Michael. I  
20 understood that the final decision will be up to the  
21 decision maker, Michael Beker.

22 **Q.** And so at this point, anything that Mr. Prilik had told  
23 you was not final; was not official. Is that right?

24 **A.** Yes.

25 **Q.** Directing your attention to page 8 -- actually, let's back

1 up to the bottom of page 7. Sorry about that.

2 Mr. Prilik said, actually, beginning at about line 20,

3 "That is to say, I'm now thinking

4 aloud. And what if there is a problem, or

5 even -- or, shall we say, it's not under --

6 it's not under -- not under Michael's

7 control to change those membranes. Do we

8 have some other alternatives?"

9 When he said "membranes," did you understand him to  
10 mean the shipping channels out of Russia?

11 **A.** Yes. Customs.

12 **Q.** Okay. And -- and he's telling you that it's not under  
13 Michael's control. Isn't that correct?

14 **A.** He's proposing: What if it is not under Michael's  
15 control?

16 **Q.** You didn't believe him?

17 **A.** I did not believe him.

18 **Q.** Okay. And then you go on, and you say.

19 "The way -- the way it is ordered,  
20 something else can be ordered this way.

21 You understand? And this is firstly.

22 Secondly, well -- well, I guess he probably  
23 knows about this a little bit more than you

24 do. And it's up to him to make those

25 decisions. And he will probably know how

1           he would be able to help, or wouldn't be  
2           able to help, or what he wants to do."

3           Right?

4           You're suggesting that Mr. Beker may have a solution  
5 to the customs problem. Isn't that right?

6 **A.**    I'm suggesting that he was the one who started these  
7 problems.

8 **Q.**    And -- and because he started it, in your mind, you  
9 thought he could fix it for you?

10 **A.**    Yes.

11 **Q.**    So you are looking for Mr. Beker to suggest a solution to  
12 your customs problem?

13 **A.**    No.

14 **Q.**    Well, let's look at page 9, lines 21 through 24. You say  
15 to Mr. Prilik,

16                       "Well, Dude, once again, when I feel  
17                       that -- I want to solve problems that are  
18                       being forced upon me. And I don't have any  
19                       other choice right now."

20           And, again, you felt Mr. Beker was to blame for your  
21 problems in Russia, but you were looking to him for some sort  
22 of solution to that problem. Isn't that correct?

23 **A.**    No.

24 **Q.**    And again, in this conversation, no one made any  
25 suggestion about charging TACOM higher prices. Isn't that

1 correct?

2 **A.** No.

3 **Q.** Let's turn to Call Number 4. That call occurred on -- on  
4 August 29th, 2005. Is that correct?

5 **A.** Yes.

6 **Q.** And in that call, you spoke to Arie Prilik again. Is that  
7 right?

8 **A.** Yes.

9 **Q.** Up to this point, you haven't spoken to Mr. Beker at all,  
10 correct?

11 **A.** With the exception of August 17 conversation.

12 **Q.** Okay. Thank you.

13 And -- and Mr. Prilik tells you, at the bottom of page 2,  
14 carrying over to page 3,

15 "He apologized for the fact that he  
16 wouldn't call back today, and basically  
17 asked for a little timeout -- a day or  
18 two -- in order to probe all of the ends  
19 and exits, and to understand what is  
20 possible or impossible to do."

21 Mr. Prilik was referring to Mr. Beker there?

22 **A.** That was my understanding. Yes.

23 **Q.** Okay. And Mr. Prilik told you that -- that Mr. Beker  
24 wanted time to look at the problem more closely. Is that  
25 right? That's what you understood he was saying?

1 A. To look at the problem more closer?

2 Q. Sure. To understand what is possible or impossible to do.  
3 Right?

4 A. My understanding is that he had to call to Russia, and  
5 figure out what he could do, or not.

6 Q. And -- and what's that understanding based on?

7 A. My past conversation.

8 Q. And -- and your understanding of the entire customs  
9 problem is based on something that Mr. Gaber told you?

10 A. And Michael confirms this later on, in the --

11 Q. Okay. On the 17th? On the 17th?

12 A. Later on here, in -- in our conversations later on.

13 Q. Okay, but again, your original information about the  
14 customs problem came from Mr. Gaber?

15 A. Yes.

16 Q. Who got it, in turn, from NPZ?

17 A. Yes.

18 Q. And you, yourself, never talked to anybody in Russia about  
19 the true nature of that problem. Isn't that right?

20 A. I did not.

21 Q. And Mr. Prilik goes on. He says,

22 "The question that arose, if we think  
23 in the direction of how, after all, not to  
24 let down the Americans, but indeed, to  
25 finish and deliver what they need to them."

1 By "the Americans," he was referring to TACOM,  
2 correct?

3 **A.** Yes.

4 **Q.** And he's not talking about raising prices to TACOM at that  
5 point. Isn't that right?

6 **A.** Not at this point, no.

7 **Q.** Okay. He's talking about finishing the contract; the  
8 contract that ATN was performing at this point in time. Isn't  
9 that right?

10 **A.** Yes.

11 **Q.** And then he asks you --

12 "And then what quantities and terms  
13 were subscribed to?"

14 He's referring to quantities and terms under the  
15 Battalion Set II contract, right?

16 **A.** Yes.

17 **Q.** He's asking you about how much you had to deliver, and  
18 when you had to deliver it?

19 **A.** Battalion Set II, phase one -- that's what we were  
20 discussing.

21 **Q.** Right. And -- and you tell him, at the bottom of the  
22 page, lines 21 and 22,

23 "Until the end of October. The faster  
24 the better. Approximately 3,500 units."

25 Right?

1 A. Yes.

2 Q. And, in fact, it was October 15th; not the end of October.

3 A. Yes.

4 Q. Mr. Prilik says,

5 "October 31st you have the shortage.

6 How many? 2,500?"

7 And you respond,

8 "Three and a half thousand."

9 That was how many goggles ATN still had to deliver  
10 under the Battalion Set II contract by October 15th. Is that  
11 correct?

12 A. Yes.

13 Q. Let's turn to the bottom of page 5, carrying over to  
14 page 6. And Mr. Prilik says, beginning at line 22,

15 "Theoretically, it is possible to move  
16 somebody aside to stretch somebody out.

17 That is to say, this won't be my decision

18 against 3,671 pieces. And we are now

19 September. October. He'd say it's a

20 science fiction, but I think this is here.

21 They will accept that which they would be

22 given. There's no way about it."

23 Now, the person that Mr. Prilik was referring to as

24 "he" -- that was -- you understood that was Michael Beker,

25 correct?



1 A. Yes.

2 Q. And -- and, "He'd say it was science fiction" -- Prilik  
3 was telling you that -- that Mr. Beker would say that it would  
4 be impossible to supply that many goggles in that short period  
5 of time, correct?

6 A. Yes.

7 Q. And at that point, you say to him, at lines 10 and 11,

8 "Well, for that, we need to agree on  
9 something: How exactly you want to do it.  
10 You understand."

11 And again, you're soliciting ideas from Mr. Prilik.  
12 Is that right?

13 A. We are discussing production here, and deliveries.

14 Q. Okay.

15 A. But there is no scenario on how to deliver. That's why  
16 I'm asking him.

17 Q. Okay, but the point is you're asking him how exactly you  
18 want to do it, right?

19 A. Yes.

20 Q. You're asking for him to propose some sort of solution?

21 A. Because we're discussing a solution here.

22 Q. Okay. And -- and, in fact, you say that in the next  
23 paragraph. At lines 18, 19, and 20, you say,

24 "The thing is, we would like to feel  
25 secure. We would like to find a solution,

1 as they say."

2 Right?

3 **A.** Yes.

4 **Q.** It's Mr. Prilik you're talking to about finding that  
5 solution, correct?

6 **A.** Yes.

7 **Q.** On the next page, page 7, at line 14, you say,

8 "And how this -- you see for this to be  
9 resolved?"

10 Again, you're asking Mr. Prilik for his idea about  
11 how this can be -- what kind of solution he could offer, right?

12 **A.** Yes.

13 **Q.** And you respond -- and he responds,

14 "I'm trying to understand your  
15 preliminary opinion. You and I or Michael  
16 and you could reach an agreement about  
17 whatever you want."

18 He's telling you that -- that he's looking for you to  
19 suggest something, right?

20 **A.** No. He's finishing the phrase later on.

21 "But what it boils down to that, in all  
22 likelihood, that comrade from Jordan" --  
23 That would be Ramzi, with ITE.

24 -- "that the price for him will need to  
25 be raised. And likely he will need to

1 change his supplier."

2 Q. "Change the supplier," meaning switch to Newcon?

3 A. That was one of the scenarios here.

4 Q. Okay. One of the scenarios. Again, that's all we're  
5 talking about in this conversation, is possible scenarios?

6 A. Yes.

7 Q. All right. And then on page 8, towards the bottom,  
8 line 22, Mr. Prilik says,

9 "I apologize once again that Michael  
10 didn't call back. It's just that he wants  
11 to understand the entire situation, and to  
12 probe on that side what is possible, and  
13 what is impossible."

14 And he continues,

15 "Both the administration issues and the  
16 production issues. So it would be easier  
17 for you guys, so to speak, to talk."

18 And again, he's telling you that Mr. Beker is -- just  
19 wants to -- an understanding of what the situation is. Isn't  
20 that correct?

21 A. Yeah. He wants me to make a proposal.

22 Q. He's asking for you to describe what your problem is,  
23 right?

24 A. Yes.

25 Q. And finally, on page 10, towards the end of the

1 conversation, at lines 4 through 9, Mr. Prilik says,

2 "I know, off the -- off the record, I

3 know that our production would come up to a

4 thousand items a month."

5 You say, "Yes."

6 And Prilik says,

7 "But -- but still it's a significant

8 amount in such time limits. Oh, boy."

9 Mr. Prilik was telling you that, if Newcon was to --  
10 to try to fulfill this contract, it would be a stretch for  
11 them, right?

12 **A.** Yes.

13 **Q.** And again, in this conversation, there's no talk about  
14 raising prices to TACOM. Is that correct?

15 **A.** No, it's not correct.

16 Right there, on page 8, my comment --

17 Well, we can go more specifically to that conversation,  
18 but what I'm saying hypothetically --

19 "Well, we can -- he can difficult, but

20 I told you that, to go anywhere

21 hypothetically above \$1,800, or even close,

22 he will be forced to raise the price."

23 **Q.** Oh, right. That's you, saying that?

24 **A.** Right.

25 **Q.** You're the one who suggests that maybe prices will have to

1 be raised to TACOM. Isn't that correct?

2 **A.** No. The \$1,800 idea was discussed before.

3 **Q.** But you're the one who says that's what's going to have to  
4 be charged to TACOM, right? Mr. Prilik never says that?

5 **A.** Yes, he does, right there on page 7.

6 Prior to me confirming that, his words are,

7 "The likelihood it would be required  
8 from comrade from Jordan to raise the  
9 cost."

10 **Q.** It doesn't say that ITE would charge more to TACOM.  
11 You're the one who draws that conclusion. Isn't that right?

12 **A.** Yes.

13 **Q.** And makes that suggestion?

14 **A.** Yes.

15 **Q.** Mr. Prilik doesn't say that?

16 **A.** Well, he is suggesting raising the cost, and --

17 **Q.** He's --

18 **A.** -- not just coming to the conclusion --

19 **Q.** He's suggesting, and you're --

20 **A.** -- that he is not --

21 **Q.** -- inferring from that, that prices will have to be raised  
22 to TACOM?

23 **A.** You asked me if there was a discussion of raising the  
24 price.

25 And there was a discussion. And I just read you that.

1 Q. Right. And you're the one who says prices will have to be  
2 raised to TACOM?

3 A. After Arie suggested it.

4 Q. Okay. Now, in the fifth call, on August 30th, this is the  
5 first time since August 17th that you speak to Mr. Beker. Is  
6 that correct?

7 A. Yes.

8 Q. And at page 3, beginning at line 21, Mr. Beker says,

9 "I apologize in advance if I'm going to  
10 ask something again that -- which you guys  
11 already discussed one way or another. I,  
12 like, I didn't get into the details."

13 And when he said, "I didn't get into the details," he  
14 meant with Arie Prilik. That's what you understood. Is that  
15 correct? He didn't get into the details with Arie Prilik?

16 A. Right.

17 Q. And -- and the first issue he puts to you in that  
18 conversation on page 4, beginning at line 2, is,

19 "So the most important thing that I  
20 want to understand -- this is -- ah -- how  
21 you see -- ah, what kind -- I apologize in  
22 advance for the expression, but assistance  
23 should come from my side, or, well, how --  
24 how do you see it? What -- what do you  
25 want me to do?"

1           Isn't that right? That's the first thing he asks  
2 you?

3 **A.** Yes.

4 **Q.** And he goes on. On page 5, beginning at line 15, he says  
5 to you,

6           "As I see it, if not today, then  
7 tomorrow, you have to report a failure to  
8 fulfill the contract, from my point of  
9 view, because everything that I know has  
10 to -- ah -- leads to the fact that you  
11 wouldn't be able to fulfill your  
12 obligations, for various kinds of reasons.  
13 Once again, this is my opinion. This is  
14 what I know; what I think that I know. Let  
15 me put it this way."

16 Right?

17 And what Mr. Beker was telling you -- that, again, in  
18 his view, ATN would not be able to perform under the contract.

19 **A.** I think that was a continuation of another phrase. And --  
20 where I commented, "Uh-huh"; but it started with,

21           "The customs is closed. The shipping  
22 is not possible" --

23 **Q.** Okay, but it --

24 **A.** (Reading)

25 -- "the shipping is not possible. From

1           this side, the problems I know as well --  
2           well, I wouldn't say a hundred percent, but  
3           90 percent."

4           And then he is saying what you just mentioned.

5 **Q.**   Okay. Let's assume for the sake of argument that in --  
6 and you're -- in this passage -- let me start again.

7           In this passage you just read, you infer from that, that  
8 Mr. Beker is responsible for your problems with customs, right?

9 **A.**   Yes.

10 **Q.**   And you don't know that, yourself, directly from customs  
11 or -- or your supplier in Russia, right?

12 **A.**   No, I do not.

13 **Q.**   You're relying on just what Mr. Beker is saying in this  
14 conversation?

15 **A.**   Yes.

16 **Q.**   What your inference is; what your read on what his  
17 statement was, right?

18 **A.**   Yes.

19 **Q.**   Just assuming, for the sake of argument, that Mr. Beker  
20 had something to do with your problems in Russia, the fact of  
21 the matter is that he still tells you that he thinks: You  
22 won't be able to -- "you" being ATN -- won't be able to  
23 complete the contract, right?

24 **A.**   Yes. He is applying the pressure here.

25 **Q.**   For a variety of reasons? Isn't that right?



1 A. Yes.

2 Q. And your response is, "I've got it." Right?

3 A. Yes.

4 Q. You don't argue with him? You don't say, "No. Absolutely  
5 ATN can live up to its obligations. We can finish the  
6 contract"?

7 A. No. I'm just listening to what his view is.

8 Q. Okay. The point is: You don't dispute his view?

9 A. No, not here.

10 Q. And he goes on. He says,

11 "I have two ways, as it were. The  
12 first way is to continue working, like I  
13 have been working, and to wait and see how  
14 it all will end."

15 And what he's telling you is that he can just watch,  
16 and see how you do under the contract, right?

17 A. Yes.

18 Q. And then you suggest that,

19 "Yes, but with us, it could also  
20 somehow get resolved."

21 And by the "resolved," you mean your problems with  
22 customs?

23 A. Yes.

24 Q. And then Mr. Beker goes on, and talks more about his  
25 perception of your problems. Let's go to page 7, line 4.

1 He says,

2 "And IITs -- first of all, he can't  
3 make this much."

4 The "he" he's referring to is Mr. Aksenov, right?

5 **A.** Yes.

6 **Q.** And Mr. Aksenov runs the factory in Novosibirsk:  
7 Ekran-FEP?

8 **A.** He was.

9 **Q.** And at that time, Ekran-FEP and Mr. Aksenov were supplying  
10 the image-intensifier tubes that you were using in the goggles  
11 you were supplying under the Bat. Set II contract?

12 **A.** Yes.

13 **Q.** And he's saying that Mr. Aksenov can't make enough tubes  
14 to satisfy the contract requirements, correct?

15 **A.** That was Michael's view.

16 **Q.** Yeah. And then he says,

17 "Second of all, he will really make  
18 crap. No -- or, for the most part; for the  
19 most part of it."

20 And again, he's talking about Mr. Aksenov and  
21 Ekran-FEP. Isn't that correct?

22 **A.** Yes.

23 **Q.** And he's saying that the image-intensifier tubes that  
24 Ekran-FEP is are producing just aren't very good quality?

25 **A.** Right. That's what he's saying.

1 Q. And, in his view, they won't meet the requirements of the  
2 Battalion Set II contract?

3 A. We could leap to that conclusion.

4 Q. And then he says,

5 "And the third thing -- in all  
6 probability, they wouldn't allow him to  
7 move it out."

8 And again, he's -- the "him" is Mr. Aksenov, correct?

9 A. Correct.

10 Q. And the "they" is customs?

11 A. Yes.

12 Q. And, in point of fact, the reason that customs was giving  
13 Mr. Aksenov trouble was because they alleged that he needed an  
14 export permit for his image-intensifier tubes?

15 A. Oh, interesting.

16 "They were crap," in terms of performance; but they would  
17 require an export license, which would need to be  
18 high-performing tube.

19 Q. But that's what Mr. Beker was telling you. Isn't it true?

20 A. That's what he was telling me.

21 Q. And your response to his allegations is simply, "I've got  
22 it", right?

23 A. Yeah. I keep repeating this, because I'm listening to his  
24 point of view.

25 Q. Okay. You don't dispute it, though?

1 A. No.

2 Q. You don't tell him he's wrong?

3 A. No.

4 Q. You don't tell him, "Our goods don't need export permits"?

5 A. No.

6 Q. Or that they meet spec.?

7 A. No.

8 Q. Or that Mr. Aksenov can produce enough?

9 A. I think all that, he knew.

10 Q. Okay. And then he goes on, at the bottom of page 7, and  
11 he says,

12 "From my point of view, this will all  
13 come to a poor end. Well, in fact, that  
14 was my opinion right from the start."

15 And -- and by "all this," he means ATN's performance  
16 on the contract. Isn't that right?

17 A. It was not about ATN's performance on the contract. He's  
18 laying out just that -- the problems that are there; the  
19 problems that they instigated. And those -- in my point of  
20 view, what all this will lead to for him.

21 Q. Well, I'm asking you what you understood Mr. Beker was  
22 telling you when he said these words.

23 The "poor end," when he was speaking to you, you  
24 understood he was talking about a poor end to ATN's performance  
25 under the contract?

1           **MS. HAMILTON:** Your Honor, excuse me. The witness  
2 has already answered the question.

3           **MR. HOWDEN:** I don't think he has.

4           **THE COURT:** Objection is sustained.

5 **BY MR. HOWDEN**

6 **Q.** Later on in the conversation, at page 10, beginning at  
7 line 6, you say,

8                   "Michael, explain to me. Why do you  
9 believe that we stole it?"

10                  Stole -- "it," being the contract, right?

11 **A.** Correct.

12 **Q.** And he tries to explain to you.

13                   "But the fact speaks for itself. Well,  
14 people came over and offered cheap prices,  
15 and stole it. Well, right. After all, I  
16 don't have complaints. On the contrary,  
17 well, by all means, you were entitled to do  
18 it. You made a normal decision, how you  
19 believed, from the point of view of  
20 business. If you had fit in a normal price  
21 niche, I wouldn't have said a single word  
22 to you. 'Kudos to you,' as they say, but  
23 unfortunately, the Jordanian guy fucked us  
24 all. Well, and that's it. Nothing else.  
25 I'm without any -- I swear, Dima, I'm

1 without complaints. I'm just ascertaining,  
2 because for this money, it's impossible to  
3 receive the product, well, and -- not to  
4 mention sell it."

5 He goes on,

6 "Well, it's impossible. I don't know  
7 how it is with you. It's totally  
8 impossible."

9 So he was complaining about your low prices that you  
10 offered on the contract, right?

11 **A.** Yes.

12 **Q.** But he's also adding that, from his point of view, it's  
13 impossible to provide the equipment called for in the contract  
14 at the prices that you were charging, correct?

15 **A.** Impossible to Newcon; not to ATN.

16 **Q.** Okay, but that's the gist of that part of his complaint,  
17 correct?

18 **A.** Yes.

19 **Q.** Okay. And then, going to page 13, beginning at line 21,  
20 Mr. Beker says,

21 "And now it seems to me that all this  
22 would come to no good; that is to say, this  
23 is quite serious over there. Ah, as to how  
24 your relationship is forming here, I can  
25 only guess by those, ah, shall we say,

1           calls from TACOM, or our discussions or our  
2           slanders, if one can call them so, to  
3           TACOM, and the answer to them, I mean, in  
4           terms of the quality."

5           You were aware by this point in time that Newcon had  
6   complained to TACOM about ATN's performance on the contract?

7   **A.**    Yes.

8   **Q.**    Including quality issues?

9   **A.**    Performance issues.

10   **Q.**   Performance issues; specifically, that -- that ATN was  
11   providing image-intensifier tubes that did not meet the  
12   contract specifications?

13   **A.**    Yes.

14   **Q.**   And he refers to those complaints here as -- as  
15   "slanders," right?

16   **A.**    Yes.

17   **Q.**   But, in point of fact, there was truth to what he was  
18   saying?

19   **A.**    No. It wasn't --

20   **Q.**   Well, again, in -- in June of this year, the -- the Army's  
21   Night Vision Laboratory tested your product twice, and, in both  
22   instances, found that your image-intensifier tubes did not meet  
23   the FOM requirement. Isn't that correct?

24   **A.**    According to U.S. measure procedures.

25   **Q.**   Okay.

1 **A.** According to the Russian measure procedures, we conducted  
2 three different certifications; the -- whatever we could do in  
3 that short of a time. Every possible entity verified that they  
4 were 750, and above.

5 **Q.** No entity in the United States ever verified that. Isn't  
6 that correct?

7 **A.** No.

8 **Q.** And it was the United States that was buying those  
9 goggles. Isn't that right?

10 **A.** Yes.

11 **Q.** Let's turn to page 15. Beginning at line 17, Mr. Beker  
12 says,

13 "And now we are returning, once again,  
14 to the very first issue. So I have two  
15 options. The first one is to do nothing;  
16 to sit and to wait for where it would lead  
17 to.

18 The second one is, ah, well, like, I  
19 understood it correctly. Now I'm going to  
20 make you -- repeating it now, whether my  
21 help is needed or my help is not needed, if  
22 there are, so to speak, either questions or  
23 requests, I'm ready to answer them, or to  
24 react."

25 So you understood Mr. Beker was saying he had two



1 options, as he saw it, right?

2 **A.** Yes.

3 **Q.** One option was to do nothing, and see how ATN makes out on  
4 the contract?

5 **A.** Right.

6 **Q.** And the other option was to find out whether his help was  
7 needed, or not needed, right?

8 **A.** Again, he was applying the pressure on the first part; and  
9 on the second, was waiting for me to make an offer. And I did  
10 not. He wants me to ask for help. He wants me to make an  
11 offer, and I did not.

12 **Q.** But he hadn't suggested doing anything on behalf of Newcon  
13 at this point. Isn't that correct?

14 **A.** At this point? No.

15 **Q.** And so you respond to him,

16 "But I wanted -- if, once again, there  
17 were some ideas how you see it, if -- you  
18 understand only too well what kind of help  
19 we need."

20 And he responds to you,

21 "I don't know."

22 Right? He doesn't understand what kind of help you  
23 need? At least, that's what he says, correct?

24 **A.** Yes. At this point, there's no -- he doesn't understand.

25 **Q.** Okay. And so you try to tell him. You tell him, at lines

1 17 through 19,

2 "From the other side, currently, it's  
3 been a month already, and I haven't  
4 received the units."

5 "The units" are the night-vision goggles?

6 **A.** Yes.

7 **Q.** And you haven't received any for a month, from Russia. Is  
8 that correct?

9 **A.** Yes.

10 **Q.** And he responds to you that,

11 "You won't receive them. That's  
12 unequivocal. That's a hundred percent; not  
13 even 99; a hundred.

14 "Furthermore, there are big problems  
15 that our friends are having, both as a  
16 private matter, and personal matters; as a  
17 company matter. I know that Kim has  
18 serious problems. He will or -- he is  
19 having" --

20 And then he goes on with.

21 -- "which I, fortunately, have nothing  
22 to do; but they exist."

23 And you respond, "I've got it."

24 The "Kim" he's referring to is Kim Schwartz?

25 **A.** Yes.

1 Q. And he's an employee at NPZ?

2 A. He was. Yes.

3 Q. And again, yesterday, we talked about the fact that you  
4 were aware that the businessmen in Novosibirsk all worked  
5 closely together and knew each other?

6 A. Yes.

7 Q. And Mr. Beker had an ongoing relationship with his  
8 image-tube manufacturer Mr. Loktionov, at Katod?

9 A. Yes.

10 Q. And Mr. Loktionov had worked with Mr. Aksenov -- your  
11 supplier -- at Ekran-FEP?

12 A. Yes.

13 Q. And that they weren't as business colleagues; they were  
14 also personal associates. Is that right?

15 A. That was my understanding.

16 Q. Yeah. They socialized together?

17 A. Socializing? I'm not sure a hundred percent about that.

18 Q. Well, later on in the conversations, the subject comes up  
19 of -- of them getting together for one or the other's birthday.  
20 Is that right?

21 A. Right.

22 Q. And, in fact, Mr. Beker indicates that -- that he heard  
23 about the birthday party, and he heard about what they were  
24 talking about at the birthday party, right?

25 A. Right.

1 Q. And at this juncture, Mr. Beker's telling you,  
2 "Fortunately, I have nothing to do" --  
3 Let me read it accurately.

4 -- "with which I, fortunately, have  
5 nothing to do; but they exist."

6 He's telling you he has nothing to do with these  
7 problems that are going on in Russia. Is that correct?

8 A. Well, at this point, yes.

9 Q. You didn't believe him?

10 A. Because later on in the conversation, he admits that he  
11 has his hand in it.

12 Q. Okay. And he goes on, on this same page, beginning at  
13 line 16,

14 "Well, this is why he has serious  
15 problems. And if you were somehow tied to  
16 this, then watch your ass; but once again,  
17 I'll repeat it to you one more time. I  
18 have nothing to do with this whatsoever."

19 And you respond,

20 "Yes, [chuckle] but who, then?"

21 You don't believe what he's saying?

22 A. No, I don't.

23 Q. And you don't believe his denials?

24 A. No, I don't.

25 Q. He goes on at page 18. Let's pick it up at about line 21.

1 He says,

2 "I'm saying one more time: Despite the  
3 fact that this is working to my advantage,  
4 well, to say that it's 100 percent my  
5 fault, even all things considered, it would  
6 be pleasant for me to say that, well, I am  
7 such -- such -- that's fucking it. And I  
8 stopped it. No such fucking thing; that is  
9 to say, I, with all -- can't take  
10 everything upon myself."

11 Right?

12 Is this one of those passages where you interpret it  
13 as him admitting that he's responsible for the problems?

14 **A.** Yes.

15 **Q.** And, in fact, he's saying: Gee, you know, despite the  
16 fact that all of these things are -- are working in favor of my  
17 company, I can't take credit for them.

18 Isn't that right?

19 **A.** Not a hundred percent.

20 **Q.** Not a hundred percent. Okay.

21 And again, he goes on. At lines 11 and 12, he says,

22 "The responsibility -- well, so I can't  
23 claim all of responsibility myself for the  
24 situation."

25 And -- and adds,

1 "Even though I'm not going to hide it.

2 I most certainly -- I did do my bit."

3 Right?

4 **A.** Yes.

5 **Q.** And that's another point where you believe that he's  
6 admitting his role for whatever problems you were having with  
7 customs in Russia, right?

8 **A.** Yes.

9 **Q.** The -- the problems in Russia that you have no firsthand  
10 knowledge about?

11 **A.** Yes.

12 **Q.** And the fact of the matter is you don't know what, if  
13 anything, Mr. Beker did or said to anyone in Russia that had  
14 anything to do with your problems in Russia?

15 **A.** No.

16 **Q.** He goes on. He says, beginning at the bottom of page 19,

17 "That's not because I'm -- I'm

18 laughing; but rather, because -- well, I'm

19 giving you my word. I'm trying to fight by

20 methods available to me; by respectable

21 ones. I'm saying, once again, I have done

22 nothing that was not respectable. All the

23 rest that got stuck to it -- this is not --

24 not from me."

25 And you understood what he was saying was: If he's

1 done anything, it's only been on a respectable, legal level.

2 Isn't that right?

3 **A.** I don't see the word "legal" in there.

4 **Q.** Okay.

5 **A.** My understanding is: His definition of "respectable."

6 **Q.** Okay. And he never hid the fact that he's the one who  
7 complained to TACOM about your performance on -- on the  
8 contract?

9 **A.** No.

10 **Q.** Later on, the subject matter turns to ATN's exposure to --  
11 potential exposure to ITE. Let's go to page 26, beginning at  
12 line 9. And you say,

13 "And what he -- he'll try to do it to  
14 us, because of this. And for how much  
15 he'll sue us -- he is the only one who  
16 knows this."

17 Right?

18 And the "he" you're referring to is Ramzi Abu-Taleb,  
19 of ITE?

20 **A.** Yes.

21 **Q.** And you're expressing your concern about Mr. Taleb suing  
22 you if you fail to perform on the contract?

23 **A.** Yes.

24 **Q.** Because that's who ATN was on the hook to on this  
25 contract: To ITE? Right?

1 A. Divine being "on the hook."

2 Q. Okay. Any civil liability that ATN had as a result of  
3 inability to perform on the Battalion Set II contract was  
4 liability to ITE. Isn't that correct?

5 A. Yes.

6 Q. Not to TACOM?

7 A. If ATN did not deliver on the contract, ATN potentially  
8 could be blacklisted later on.

9 Q. On other contracts, down the road?

10 A. Yes.

11 Q. Not with respect to this contract?

12 A. If we don't deliver, already, then not with respect to  
13 this contract.

14 Q. Let's turn to page 31, beginning about line 13. You say,

15 "Everything is clear. It's just that,

16 once again, I wanted everything to be

17 perfectly clear. Well, Arie called. He

18 said that there are options. And I

19 responded, because" --

20 And what were you referring to there, when you said,

21 "Arie called, and he said that there are options"?

22 A. That Arie called on August 17th.

23 Q. And -- and made a proposal, and that's the proposal that  
24 you reported to your lawyer, and ultimately, to the FBI, right?

25 A. Yes.



1 Q. And -- and here, weren't you fishing? Weren't you trying  
2 to get Mr. Beker to -- to revisit that issue?

3 A. Is that page 31?

4 Q. Yeah.

5 A. Right. This is my comment. And there are about two pages  
6 of a conversation, starting,

7 "Dima. I don't want now like take  
8 advantage of the situation, and put you on  
9 your knees" --

10 And so on, and so forth.

11 So we keep having a discussion. And I'm referring to  
12 the first conversation here, of what Arie offering at  
13 August 17th.

14 Q. Okay. And you were hoping, in raising this issue, that  
15 Mr. Beker would also say something similar. Isn't that  
16 correct?

17 A. I wasn't there to offer anything; and I didn't.

18 Q. But that's why you brought the subject back to the Arie's  
19 conversation with you on the 17th -- 17th -- to see if  
20 Mr. Beker would say something similar. Isn't that right?

21 A. We're discussing here why we're having the conversation.

22 Q. Okay. And -- and Mr. Beker responds to you,

23 "That is to say, you have to agree that  
24 Arie is entitled to have, like, some sort  
25 of his own opinion."

1           Isn't that correct?"

2   **A.**    Yes.

3   **Q.**    He's not buying into Mr. Prilik's earlier suggestions,  
4 right?

5   **A.**    That, I cannot conclude from here.

6           **MR. HOWDEN:** Your Honor, I'm only about halfway  
7 through this call. Would it be a convenient time to take a  
8 break? I can continue just as easily, but --

9           **THE COURT:** How much longer are you going to be with  
10 this call?

11          **MR. HOWDEN:** It's the longest call. Yeah. And I'm  
12 about --

13          **THE COURT:** The longest day.

14          **MR. HOWDEN:** The longest day.

15               I'm only about halfway through it; not even quite  
16 that.

17          **THE COURT:** You need a break, or shall we forge  
18 forward?

19               You don't get to -- you don't get to say much about  
20 all of this. So I'm giving you an opportunity. You want to  
21 take a break now, or --

22                   (Jurors nod)

23          **THE COURT:** We'll take 15 minutes now, and then we'll  
24 be ready to forge forward after.

25               Please follow the instructions about not discussing

1 the case amongst yourselves or anyone else, or form or express  
2 any opinions about what you've heard. We'll see you at the end  
3 of the recess.

4 You may step down, Mr. Rocklin; but again, do not  
5 discuss your testimony with any other person.

6 (Jury out at 10:21 a.m.)

7 (Whereupon there was a recess in the proceedings  
8 from 10:21 a.m. until 10:46 a.m.)

9 **THE COURT:** You may continue.

10 **MR. HOWDEN:** Thank you, your Honor.

11 **BY MR. HOWDEN**

12 **Q.** Mr. Rocklin, I would like you to direct your attention to  
13 page 33 beginning at line 6. Mr. Beker tells you:

14 "So one way or the other, the  
15 information that I have there, there are  
16 also ones in the form of semi-finished  
17 products. They're manufactured  
18 approximately... from 1,000 to 2,000.  
19 The question is... in various stages. He  
20 simply doesn't have enough to complete  
21 all of this. I'm telling you this  
22 100 percent. Even given the fact that...  
23 we will forget about quality."

24 And you respond: "Well, I've got it."

25 My first question to you is: What was your understanding

1 of the "he" that Mr. Beker was referring to? Who was that?

2 (Brief pause.)

3 **THE COURT:** Have you found the right spot?

4 **THE WITNESS:** I'm looking for the page prior to this,  
5 page 32.

6 **THE COURT:** You can't tell from the substance of that  
7 who is being refers to?

8 **THE WITNESS:** I just want to make sure.

9 **THE COURT:** Okay. Well...

10 **BY MR. HOWDEN**

11 **Q.** Let me ask it another way and maybe it would be easier to  
12 answer. Is he referring to either Mr. Aksenov or  
13 Mr. Metelskiy?

14 **A.** I believe he is referring here to Mr. Metelskiy.

15 **Q.** And, again, Mr. Metelskiy was the manager of the NPZ  
16 plant?

17 **A.** Yes.

18 **Q.** And NPZ was your supplier for the completed goggles?

19 **A.** Yes.

20 **Q.** NPZ assembled -- put all the pieces together, put the  
21 tubes in the goggles and shipped them to ATN, is that correct?

22 **A.** Yes.

23 **Q.** Okay. And so the semi-finished products that Mr. Beker  
24 refers to in this passage, did you understand those to be the  
25 goggles themselves?

1 **A.** Yes.

2 **Q.** And so was it your understanding that he was telling you  
3 he understood that he had between 1,000 -- "he" being  
4 Mr. Metelskiy, had between 1,000 and 2,000 semi-finished sets  
5 of goggles?

6 **A.** Yes.

7 **Q.** And, by the way, was that accurate or close?

8 **A.** I recall that it was a large number that was already  
9 assembled and some number that was not. It was in parts.

10 **Q.** In Russia?

11 **A.** Yes.

12 **Q.** Okay. Let's move forward to page 39. This has been a  
13 long conversation and we're not even close to the end, but on  
14 age page 39 at line 15, Mr. Beker says:

15 "But all this is working out a  
16 little bit differently. If you guys  
17 decide that you really... so far, to tell  
18 you the truth I haven't... haven't heard  
19 from you a clear understanding of what  
20 you guys have already decided for  
21 yourselves what to do. That is to say, I  
22 think that you... this..."

23 You understood that Mr. Beker was asking your view of what  
24 a solution was to your problems, isn't that right?

25 **A.** Yes.

1 Q. And he was asking because he hadn't heard that yet?

2 A. Yes.

3 Q. And on the next page, page 40, he goes on and he says,  
4 beginning at line 20:

5 "I'm also all for... I... I don't  
6 understand the main point for now. I  
7 don't understand on what platform we can,  
8 ah... like, combine our ambitions. This  
9 is what I don't understand for now, in  
10 the big picture."

11 Mr. Beker was telling you that he didn't understand how  
12 you proposed to work with him to solve this problem, is that  
13 right?

14 A. He was referring here to the Arie's suggestions, that's  
15 what we're discussing here.

16 Q. But the "we" he is referring to when he says "what  
17 platform we can combine our ambitions," he's talking about him  
18 and ATN, right?

19 A. Yes.

20 Q. Okay. Let's go over to page 44, and from line 8 through  
21 line 17. And, again, this is Mr. Beker talking, I believe.  
22 And he says:

23 "In the end, you'll offer some  
24 prices that are probably acceptable to  
25 you, but on the whole are not acceptable

1 to the market because we work very  
2 closely both with DEP Photonis and we  
3 work with representatives of the ITT. We  
4 also work with, eh... Inside Technology.  
5 Well, practically we don't even hesitate  
6 to pick up the phone and discuss the  
7 questions of whether or not they are  
8 going... or not going -- one way or the  
9 other -- to participate. That is to say,  
10 that we will now be talking about, 'No  
11 don't participate. We will give you a  
12 payment to step back.' For what?"

13 DEP Photonis is the European manufacturer of image  
14 intensifier tubes, that I believed you described them earlier  
15 in your testimony?

16 **A.** Yes.

17 **Q.** And they produce a full range of Gen II tubes, is that  
18 right?

19 **A.** Yes.

20 **Q.** They weren't -- they didn't participate in the Battalion  
21 Set II contract in any way, did they?

22 **A.** Not to my knowledge.

23 **Q.** Or the Battalion Set I contract?

24 **A.** Not to my knowledge.

25 **Q.** And ITT, that's the big American company?

1 A. Yes.

2 Q. They produced Gen III tubes?

3 A. Yes.

4 Q. And they have an exclusive arrangement with the United  
5 States military to provide them with Gen III equipment, is that  
6 right?

7 A. Not sure if the arrangement is exclusive.

8 Q. Okay, fair enough. But as a Gen III producer, they  
9 weren't a competitor for the Battalion Set I or Battalion Set  
10 II contracts, correct?

11 A. No, not to my understanding.

12 Q. In fact, based on your experience, does the military  
13 call for night vision to be supplied that is either Gen II or  
14 Gen III?

15 A. No.

16 Q. Generally those two categories of products don't compete  
17 against each other, isn't that right?

18 A. Well, sometimes they do.

19 Q. Okay. But generally?

20 A. I think in many markets DEP successfully -- I mean,  
21 Photonis now competed against Generation III.

22 Q. And that's because DEP also produces extremely high end  
23 Gen II products, isn't that right?

24 A. Yes.

25 Q. That are comparable to Gen III performance?



1 **A.** Yes.

2 **Q.** But that's not what we're talking about in the Battalion  
3 Set I or Battalion Set II contracts?

4 **A.** No.

5 **Q.** And when Mr. Beker made this statement to you, you didn't  
6 believe that he was really picking up the phone and talking to  
7 either of these companies, did you?

8 **A.** No.

9 **Q.** You thought he was just kind of showing off?

10 **A.** I thought that he was explaining his level of cooperation  
11 with the other competitors.

12 **Q.** But you didn't think he was actually call these other  
13 competitors?

14 **A.** No.

15 **Q.** Let's go to page 50, beginning at line 10. Mr. Beker  
16 explained to you that:

17 "Newcon... Newcon always said one in  
18 the same thing: Guys, watch out for  
19 quality. We lost the tender because,  
20 ah... the price turned out to be lower,  
21 but we know that there are  
22 requirements -- 750 FOM. And if we were  
23 told that 500 FOM would be accepted, we  
24 would have lowered the price as well.  
25 That's Newcon's position."

1 And you said: "Well, I understand."

2 And he went on:

3 "Nothing more. That's why we demand  
4 that you guys check the quality. And if  
5 the devices don't comply with 750 FOM,  
6 then they don't supply the devices that  
7 are supposed to be supplied, and that's  
8 why Newcon would have made it cheaper as  
9 well."

10 Now, the "guys" that he was referring to was TACOM, wasn't  
11 it?

12 **A.** Yes.

13 **Q.** And Mr. Beker was referring to his past complaints to  
14 TACOM about ATN's performance, isn't that right?

15 **A.** Yes. He was responding to me, saying that it is to say  
16 that you're not going to explain to TACOM that ATN did not make  
17 good on the promises because Newcon had such a ruthless hand in  
18 it.

19 **Q.** Okay. And what Mr. Beker explained to you is that his  
20 complaints about ATN to TACOM included an allegation that ATN  
21 couldn't meet the FOM requirement in the contract, right?

22 **A.** Yes.

23 **Q.** And he said, if he had understood that there was actually  
24 a lower FOM requirement in the contract, he could have offered  
25 on lower price, isn't that right?

1 **A.** That's what he was saying here, yes.

2 **Q.** Okay. The conversation continued and on page 59 beginning  
3 at line -- well, let's start with your entire statement. Let's  
4 go with beginning at line 16:

5 "Say I hear you. Next question, if  
6 I start here all this, and once again,  
7 that which is considered, ah... in this  
8 contract... ah, the decision is up to me  
9 because I worked on it and I... Lyonya,  
10 naturally, well, took care of the Russian  
11 and all that, but I'm a decision maker,  
12 that's for sure. But I'll have to, well,  
13 run by, obviously, Marc, and sometimes,  
14 as they say, ah, a bird in the hand is  
15 worth two in the bush."

16 And you continued on the next page and said:

17 "For me to start working on this, I  
18 would like some, I don't know, well, good  
19 faith deposit or something like that. Is  
20 it possible?"

21 When you said a "bird in the hand is worth two in the  
22 bush" -- by the way, is that the Russian phrase the same as the  
23 English phrase?

24 **A.** No.

25 **Q.** Okay.

1 **A.** The Russian phrase is the bird in the hand better than the  
2 bird in the sky.

3 **Q.** Does it mean essentially the same thing?

4 **A.** Yes.

5 **Q.** Which is to say you were -- you were telling Mr. Beker  
6 that having something is better than hoping for getting more  
7 but not having any guarantee to it, is that right?

8 Boy, that's a horrible way of expressing that phrase.

9 **THE COURT:** Want to try that again?

10 **MR. HOWDEN:** Yeah, why don't I?

11 **BY MR. HOWDEN**

12 **Q.** It's better to get something than risk losing everything,  
13 is that roughly correct?

14 **A.** If you could help me. Is this after the \$75 range; 50,  
15 75, 100 range for each goggle not to be delivered? If it is  
16 after, then I'm referring to some sort of advance payment.

17 **Q.** But -- but -- okay. But the point being, though, that the  
18 idea you are expressing to Mr. Beker is it's better to have  
19 something in your hand rather than risking everything and maybe  
20 not getting anything?

21 **A.** No. What I'm referring here is with advance payment I  
22 could go and prove that Newcon is serious about their offer to  
23 pay for each goggle that is not delivered.

24 **Q.** Okay. And so that then leads to your next statement:

25 "For me start working on this, ah, I

1 would like some, I don't know, well good  
2 faith deposit or something. Is that  
3 possible?"

4 **A.** Yes.

5 **Q.** And that good faith deposit, this is the first time that  
6 the idea of Michael paying you money up front is raised?

7 **A.** Yes.

8 **Q.** And you raise it?

9 **A.** Yes.

10 **Q.** And did you raise it because the FBI asked you to raise  
11 the subject?

12 **A.** Yes.

13 **Q.** And Mr. Beker, at least at this point, resists that  
14 notion, isn't that right?

15 **A.** Yeah, he is reluctant.

16 **Q.** Okay. And as your conversation continues, he says at page  
17 61 link at line 19:

18 "That's why you should probably  
19 think about it again. Consult Marc  
20 again. Consult Lyonya again. And if you  
21 guys make such... Not because, as it  
22 were... I doubt that you can't make such  
23 a decision alone. I think that is such a  
24 discussion that one just needs to consult  
25 on it, as it were, at the least."

1 Q. The Marc is Marc Margovsky?

2 A. Yes.

3 Q. And the Lyonya is Lenny Gaber?

4 A. Yes.

5 Q. Your colleagues at work?

6 A. Yes.

7 Q. Mr. Morgovsky your boss, in fact?

8 A. Yes.

9 Q. And he is urging you to consult with them and consider all  
10 these possibilities, is that correct?

11 A. That's in response... On the prior page Mr. Beker states:

12 "In general I took it we have, as it  
13 were, want to do something. Isn't that  
14 true?"

15 And instead of confirming that, I'm saying, well, I have  
16 no other option. And he wants to make sure now that I go back  
17 to other people in Newcon -- I'm sorry, in ATN and confirm that  
18 we are on the same page.

19 Q. He goes on on the next page, page 62, and he says:

20 "Then I think that, ah, if you  
21 could... shall we say, having taken at  
22 least all the necessary papers so that we  
23 could do all this here correctly, after  
24 all, all this needs to be thought through  
25 step-by-step, prepared correctly."

1 And by "papers," he is referring to a written agreement,  
2 isn't that right?

3 **A.** Not at this point, no.

4 **Q.** Okay. Let's go to page 66, beginning at line 19. Mr.  
5 Beker says:

6 "Not because you told them to go,  
7 but after all, now, no matter whom and  
8 how there is, but the fact speaks for  
9 itself: You are here without that. They  
10 are there with that, and one can't turn  
11 all this over."

12 Do you need to put that in context to understand or to  
13 tell us what you think he was saying?

14 **A.** Right. I would like to roll.

15 **Q.** I'm asking: Do you need additional context --

16 **A.** Yes.

17 **Q.** (Continuing) -- in order to tell us what you think you  
18 were saying?

19 **A.** Yes. I need an additional page.

20 **Q.** Okay. At this point isn't he talking about your Russian  
21 suppliers?

22 (Brief pause.)

23 **Q.** In fact, why don't we just go on? Maybe that will help  
24 give you the context.

25 **A.** One second. I think that was prior to this. One second.

1 (Brief pause.)

2 **A.** Yes, I think this starts on the page 65. When Mr. Beker  
3 says:

4 "Up to the point, like even those  
5 devices that were turned out, is most  
6 likely that we also will discuss in order  
7 to take this and deliver it there, to  
8 that would be faster."

9 So he was talking about exactly the same devices that were  
10 already assembled at the factory.

11 **Q.** And he was talking about doing something with the NPZ  
12 devices?

13 **A.** That was my understanding at this point.

14 **Q.** Okay. And that's also what he's talking about on page 66,  
15 beginning at line 19?

16 **A.** Yes.

17 **Q.** And, again, by "devices" we're talking about the night  
18 vision goggles?

19 **A.** Yes.

20 **Q.** That NPZ was putting together in Russia?

21 **A.** Yes.

22 **Q.** Okay. And he goes on and he says:

23 "But, and that... and that which  
24 Newcon so to speak, well... well, I  
25 roughly... well, your friends there



1 arranged for them. This doesn't...

2 doesn't work in Metelskiy's head? Or

3 what?"

4 Was Mr. Beker asking you if Mr. Metelskiy was concerned  
5 about this situation, was worried about the customs situation  
6 and having problems with this contract?

7 **A.** Yes.

8 **Q.** And he goes on:

9 "It does work, but he proceeds from  
10 a different point for things not to get  
11 worse." Again, referring to Metelskiy?

12 **A.** Yes.

13 **Q.** And then he says:

14 "Basically, I believe that the time  
15 has come when all of us need to  
16 coordinate our work... not to spoil the  
17 market the way that it was spoiled with  
18 the zero thing."

19 The "us" he is referring to is Newcon, ATN and NPZ, isn't  
20 that right?

21 **A.** I think "us" here is ATN and then Newcon.

22 **Q.** Okay. Let's go to conversation number six, and this  
23 occurred on September 1st, 2005?

24 **A.** Yes.

25 **Q.** Is that the day after the conversation we just went

1 through?

2 **A.** Yes.

3 **Q.** And at the beginning of the conversation -- this is a  
4 conversation between you and Mr. Prilik in the beginning?

5 **A.** Yes.

6 **Q.** And on page 3, beginning at line 7, you say to Mr. Prilik:

7 "But he suggested specifically  
8 enough that he wants to, and all that...  
9 well, and we have feelings, ah... that we  
10 can come to the general consensus, ah...  
11 I would like to continue the  
12 conversation."

13 When you said that to Mr. Prilik, you were telling him  
14 that you were hoping to come to some sort of an agreement with  
15 Mr. Beker, isn't that right?

16 **A.** On the previous page 2, line 24, Mr. Prilik says: "He  
17 like told me that he reached some agreement," and I was  
18 commenting here on that.

19 **Q.** Okay. And what you said was:

20 "We have feelings that we can come  
21 to the general consensus. I would like  
22 to continue the conversation."

23 Weren't you telling him that you were hoping to reach an  
24 agreement?

25 **A.** I was telling him that I like to continue the

1 conversation.

2 **Q.** Okay. And directing your attention to page 13. By this  
3 point in the conversation your talking to Mr. Beker, correct?

4 **A.** Yes.

5 **Q.** And you say beginning at line 4, you said:

6 "And I hope that you would forgive  
7 him for that and the last time, you asked  
8 me, can I help you in any way? Well,  
9 then... well, now, there is a rather  
10 sensible offer. Yes, you guys will help  
11 me. And, yes, I will be playing your  
12 game and not because of too good a life.  
13 You understand? But... ah, I need a step  
14 from you. So last time I asked for that,  
15 you were kind of reluctant. I understand  
16 that."

17 And Mr. Beker was reluctant the last time when you asked  
18 him for a good faith deposit, isn't that correct?

19 **A.** Yes.

20 **Q.** And so in this conversation you say beginning at line 17:

21 "One second, one second. I... I am  
22 not telling you to pay me, well, all the  
23 money up front. I am not telling you to  
24 pay me 50 percent. I am not telling  
25 you... to me, well, I need to go to

1 Morgovsky and tell him that, here, they  
2 are serious about it."

3 At this point you are asking Mr. Beker to consider making  
4 some sort of up-front payment to you, is that right?

5 **A.** Yes.

6 **Q.** And you are asking because that's what the FBI asked you  
7 to do?

8 **A.** Yes.

9 **Q.** And then on the next page your conversation with him  
10 continues, and beginning at line-- well, let's take it from the  
11 top. Mr. Beker says:

12 "Dima, don't waste your strength on  
13 that. You don't need to explain it to  
14 me. I've got it."

15 And you answer:

16 "So it's forgotten. I will never go  
17 back there, and after that, you see... I  
18 have things to do. I have my commercial  
19 market and all the rest, okay? And you  
20 know only too well that most likely TACOM  
21 will never again regard us in a positive  
22 way. So it's a lot of sacrifice, right?  
23 So I simply ask you to help me solve this  
24 problem with Morgovsky."

25 And you were trying to explain to Mr. Beker that if you

1 failed to perform on the Battalion Set II contract, it would  
2 have serious repercussions for your company in dealing with the  
3 military down the road, is that right?

4 **A.** Yes.

5 **Q.** And then you say:

6 "I'll help you. Well, I will do an  
7 invoice for you for consulting services.  
8 I don't know. For camera adapters, for  
9 something."

10 And Michael says:

11 "It absolutely doesn't matter."

12 "Yes" -- and you said:

13 "Yes, you will give me some good  
14 faith deposit, which once again, in any  
15 event, if I, on... on... on an hour after  
16 I have this money, I will call Morgovsky  
17 and tell everything that there is."

18 You are the one who suggested doing an invoice for this  
19 financial transaction, isn't that right?

20 **A.** Yes.

21 **Q.** And you suggest that you put on it that it reflect that  
22 it's for consulting services?

23 **A.** Yes.

24 **Q.** And you also offer the option that you can put on it that  
25 it's for camera adapters?

1 **A.** Right.

2 **Q.** And, obviously, it's neither of those things, the invoice?

3 **A.** Yes.

4 **Q.** And then if you -- you were saying that when you get the  
5 good faith deposit, you'll call Morgovsky; that being your  
6 boss?

7 **A.** Yes.

8 **Q.** And in your mind that would -- or at least in the scenario  
9 you were laying out, that would convince Mr. Morgovsky to okay  
10 the deal and you could move forward?

11 **A.** Yes.

12 **Q.** Mr. Beker this time responds on page 15, line 8:

13 "No, unlike... I like... upon my  
14 word, there is no need either to talk me  
15 into it or to convince, I... like, trust  
16 you, I believe you. You and I reached an  
17 agreement if now... how you like say, yes  
18 I am ready to join the coalition. And  
19 afterwards already, ah... the way it will  
20 turn out, I will do what you say like..."

21 So Mr. Beker, in principle at least at this point, is  
22 agreeing to pay you something up front?

23 **A.** Yes.

24 **Q.** But he expects you to join the coalition. What did you  
25 understand the "coalition" to be?

1 **A.** To -- coalition ATN with Newcon, and for ATN not to  
2 deliver remainder of the phase one of Battalion Set II.

3 **Q.** Not to work together with Newcon on the project?

4 **A.** You can interpret it that way.

5 **Q.** Ah, okay. Mr. Beker goes on:

6 "Well, then, there is no need to  
7 keep convincing me any more. So you and  
8 I reached an agreement? Tell me what you  
9 want in the form of good faith. I don't  
10 have problems, I'm telling you once  
11 again."

12 So he's agreeing that he will pay you a good faith  
13 deposit, right?

14 **A.** Yes.

15 **Q.** When the FBI asked you to ask for an upfront payment, did  
16 they also suggest the idea of an invoice?

17 **A.** It was a discussion with the FBI --

18 **Q.** I'm sorry. Go ahead. I didn't mean to interrupt.

19 **A.** I mentioned usually there is a money transaction between  
20 the companies, then it requires some sort of receipt of  
21 payment. And that's how the idea of an invoice was brought up.

22 **Q.** Okay. And who suggested the idea of putting consulting  
23 services on the invoice?

24 **A.** I don't recall right now.

25 **Q.** Was it your idea?

1 **A.** I don't recall right now.

2 **Q.** How about the camera adapters, whose idea was that?

3 **A.** Again, it was a discussion with FBI and something to the  
4 extent it had to be -- if it had to be invoice, it had to be  
5 for something, non-tangible goods. For example, consulting  
6 services. Or some minor accessories, like a camera adapters.

7 **Q.** And why did it have to be some minor accessory or  
8 intangible goods?

9 **A.** The -- what was on an invoice, invoice was only a receipt.  
10 The understanding was that it was just an advance payment for  
11 ATN not to participate for the remainder of phase one.

12 **Q.** But I'm asking you in your discussion with the FBI, why  
13 did the label that was going to be put on the invoice have to  
14 be for something non-intangible or for inconsequential goods?

15 **A.** Because it didn't matter what it was for, because the real  
16 reason would not be on an invoice.

17 **Q.** Okay. And that was your discussion with the FBI?

18 **A.** Something to that extent.

19 **Q.** All right. And at the bottom of page 16 you say:

20 "Okay. I don't know, is \$50,000

21 too" -- and then it continues -- "too

22 much?"

23 This is the first time that a dollar amount for the good  
24 faith deposit is mentioned, right?

25 **A.** Yes.



1 Q. And that was an amount that the FBI suggested to you?

2 A. I don't recall.

3 Q. And then you go on. You say:

4 "Yes, and one thing... let us agree  
5 on one thing. You can, well, mention  
6 75... or can we agree on \$100? I think  
7 that if you go sell them for over 2,000  
8 to the Tacom..."

9 Again, those are your words, right?

10 A. Yes.

11 Q. You're the one who says Newcon can sell the night vision  
12 goggles to TACOM for over \$2,000?

13 A. But that was a discussion before the price range was  
14 established, 2,000 to \$2,500, in one of the conversations with  
15 Arie.

16 Q. Okay. But that assumes that whoever the prime contractor  
17 is is going to increase the price, right?

18 A. Yes.

19 Q. That's not a decision that was up to ATN in the case of  
20 the Battalion Set II contract, right? You couldn't tell ITE  
21 what to charge TACOM?

22 A. No.

23 Q. And if someone took your place, they couldn't tell ITE  
24 what to charge TACOM?

25 A. But if the price would be higher, that would be the

1 result.

2 Q. Well, that might be a logical conclusion, but that's  
3 supposition, isn't it?

4 A. It's a logical conclusion.

5 Q. Okay. So Mr. Beker agrees to pay you the \$50,000, and at  
6 page 18 beginning at line 21, he tells you:

7 "Send me please the invoice..."

8 You say, "Okay."

9 And he says: "...with the requisites."

10 And you respond to him: "So I'll send you the invoice" --  
11 and then continuing to the next page -- "with the requisite."

12 And Mr. Beker says:

13 "And you give me your word of honor  
14 that in case this somehow doesn't work  
15 out for you guys..."

16 And you say: "Both mine and well..."

17 Mr. Beker says: "You will return the money to me."

18 And you say: "Yes."

19 Right?

20 A. Yes.

21 Q. So in the first instance Mr. Beker reminds you to send him  
22 the invoice, right?

23 A. Yes.

24 Q. In your discussions with the FBI, did they tell you that  
25 they would prefer that there not be any written document

1 relating to the payment of the \$50,000?

2 **A.** No.

3 **Q.** But -- but -- and you didn't suggest or insist, rather,  
4 that there be some sort of writing so that on ATN's books you  
5 would have some rationale for receiving \$50,000?

6 **A.** Not that I recall, no.

7 **Q.** Okay. But at any rate Mr. Beker reminds you to please  
8 send him the invoice, right, on page 18?

9 **A.** Yes.

10 **Q.** With the requisites. And I think you've already explained  
11 the requisites are the details for the wire transfer?

12 **A.** Yes.

13 **Q.** And you know from your business experience that the -- the  
14 records for a wire transfer include detailed bank account  
15 information, bank information, routing numbers and the like,  
16 right?

17 **A.** Yes.

18 **Q.** Completely documents the financial transaction itself?

19 **A.** Not really. It documents the actual wiring of the funds.  
20 What they were for, it doesn't.

21 **Q.** Right. But the fact of the wire itself is going to be  
22 completely documented by two different banks, and all the  
23 instructions that flow between them, right?

24 **A.** Yes.

25 **Q.** And Mr. Beker added that:

1 "And you give me your word of honor  
2 that in case this somehow doesn't work  
3 out for you guys, you'll return the money  
4 to me."

5 That was part of what he understands the conditions were  
6 for him paying you the \$50,000?

7 **A.** Yes.

8 **Q.** And you agreed?

9 **A.** Yes.

10 **Q.** And at the bottom of that page, page 19, beginning at  
11 about line 20, you said:

12 "I've got it. Let me do this for  
13 you. I'll now send you the invoice  
14 for... the other way around: From us.  
15 If you want, I can simply write,  
16 consulting services, whatever you tell me  
17 or not, or I can write for you once  
18 again" -- continuing to the next page --

19 "I would prefer camera adapters."

20 All right. So for a second time you're suggesting that  
21 you put a false label on it, camera adapters or consulting  
22 services, isn't that right?

23 **A.** Yes. We're discussing invoice and what's to put on it.

24 So for the second time I'm offering that, yes.

25 **Q.** Okay. And Mr. Beker says:

1 "I would prefer something like a  
2 loan so that later on, if there is  
3 anything..."

4 You say: "I have got it."

5 He continues:

6 "One would be like... at least to  
7 talk."

8 So Mr. Beker's idea is to call it a loan, right?

9 **A.** Yes.

10 **Q.** And the reason he gives you here is so that if later on  
11 there is a problem, he can at least talk to somebody about  
12 getting it back, right?

13 **A.** Right. But both of us understand that this is not a loan  
14 or consulting services. It's an advance payment for ATN not to  
15 perform on the contract.

16 **MR. HOWDEN:** Your Honor, I would ask that that last  
17 answer be stricken. It's completely nonresponsive and it  
18 assumes all kind of facts.

19 **THE COURT:** It is stricken as nonresponsive, and the  
20 jury is instructed to disregard that statement.

21 And when I say it's stricken, that means disregarded,  
22 so. Okay. So I don't -- so you don't have to hear me say it  
23 over and over again.

24 **BY MR. HOWDEN**

25 **Q.** And Mr. Beker continues. He says at line 13 through 15:

1           "Write that it's a loan. Sign and  
2           affix the seal on the left side. I'll  
3           sign and affix it on the other side."

4           Now, the seal he was referring to is the ATN corporate  
5           seal, is that right?

6   **A.**    Yes.

7   **Q.**    And he's proposing that he will put the Newcon seal on it  
8           as well?

9   **A.**    Yes.

10   **Q.**   And then eventually he asked you to email him a copy of  
11          the invoice to him, is that right?

12   **A.**    Email and a fax.

13   **Q.**    Well, does he actually ask you to fax it to him?

14   **A.**    I think it was a discussion. One second.

15   **Q.**    Well, fax came up in the discussion, but he never asked  
16          you to fax it to him. Take a look, please. I believe the next  
17          page, page 21.

18                   (Brief pause.)

19   **A.**    Can you point out specifically where we're discussing fax?

20   **Q.**    Yeah, it's page 21. If you look at the beginning of  
21          page 7, you suggest:

22                   "I've got it. So that we shook  
23                   hands just now. I promise you that...  
24                   well, I don't have your email... if you  
25                   like, I'll fax it or if you like, I'll

1 send."

2 And he never asks you to fax it, does he?

3 **A.** I proposed that, but he never denied that I -- or he did  
4 not tell me not to fax it.

5 **Q.** Okay. But he didn't ask you to fax it to him --

6 **A.** No.

7 **Q.** (Continuing) -- isn't that correct?

8 **THE COURT:** Can we stop right there? I have an  
9 interruption. I need to take care of something.

10 **MR. HOWDEN:** Time?

11 **THE COURT:** A couple minutes, I'm hoping.

12 So please follow the instructions you have been given  
13 about not discussing the case amongst yourselves or anyone  
14 else. If you want to use the restroom, you can do that or just  
15 mill around here. Okay.

16 (Whereupon there was a pause in the proceedings  
17 from 11:29 a.m. until 11:45 a.m.)

18 **THE COURT:** Okay. Sorry about that.

19 **MR. HOWDEN:** We are back on?

20 **THE COURT:** You're back on.

21 **MR. HOWDEN:** Okay.

22 **BY MR. HOWDEN**

23 **Q.** Mr. Rocklin, following the conclusion of this conversation  
24 with Mr. Beker, you sent to him a copy of the invoice and the  
25 wiring instructions, is that correct?

1 **A.** Yes.

2 **Q.** And following that, Mr. Beker sent you an email saying  
3 your agreement was cancelled?

4 **A.** Yes.

5 **Q.** And you had a conversation with him about it the following  
6 day, September 2nd, is that right?

7 **A.** Yes.

8 **Q.** And he was upset with the way that you had sent the  
9 invoice to him?

10 **A.** Yes.

11 **Q.** He was unhappy that you had also sent it to Mr. Prilik?

12 **A.** Yes.

13 **Q.** And he was unhappy that you said you had faxed it to his  
14 business as well?

15 **A.** Yes. And I did.

16 **Q.** And as the government pointed out on page 6, beginning at  
17 line 16, Mr. Beker said in the course of the conversation:

18 "No. You don't quite understand.

19 You think that all this... like... ah,

20 what you and I are doing, well, to put it

21 mildly, somebody can use it against us."

22 Right?

23 **A.** Yes.

24 **Q.** But this is relating to you sending the invoice again,  
25 right? The "this" is you sending the invoice to him, right?



1 A. Not the invoice itself, that's my understanding.

2 Q. But Mr. Beker agreed to have you send the invoice to him,  
3 right? He didn't argue with that -- with you about it at all?

4 A. No.

5 Q. In fact, he reminded you to send him the invoice during  
6 that conversation the previous day?

7 A. Yes.

8 Q. And it was his suggestion that you put your corporate  
9 stamp on the invoice?

10 A. Yes.

11 Q. And sign the invoice?

12 A. Yes.

13 Q. That he said he'd also put his stamp on it?

14 A. Yes.

15 Q. And sign it as well?

16 A. That's what he said.

17 Q. I don't want to jump around, but Mr. Beker -- his main  
18 concern was that you hadn't done what you had agreed to do, at  
19 least in his view, isn't that right?

20 A. I think his main concern here was the way he was relating  
21 to me that I sent it, the copy to Arie.

22 Q. Okay. And if we look at page 8, beginning at line 14, he  
23 tells you:

24 "I replied to you immediately, as  
25 soon as I saw that you deemed it

1       necessary you decided for me. Why are  
2       you deciding for me? If you are deciding  
3       for -- this for me today, what are you  
4       going to decide for me tomorrow?"

5       That's how he explained what he was unhappy about, isn't  
6       that right?

7       **A.** That's how he explained it.

8       **Q.** Okay. Now, also during this conversation, he pointed out  
9       to you on page 7, beginning at line 8 that, "Lyonya flew away."  
10      And Lyonya is Mr. Gaber?

11      **A.** Yes.

12      **Q.** And what was your understanding about where Mr. Gaber had  
13      flown away from?

14      **A.** From Russia back to U.S.

15      **Q.** And Mr. Beker added: "Without calling Metelskiy."  
16      Right?

17      **A.** Yes.

18      **Q.** And, again, Metelskiy is NPZ?

19      **A.** Yes.

20      **Q.** And he repeated it:

21               "Lyonya flew away without calling  
22      Metelskiy."

23      And he added that:

24               "Without. Metelskiy doesn't know  
25      anything."

1 All right? And he was concerned about that, isn't that  
2 right?

3 **A.** Yes. And I'm asking, "Without calling?" I'm somewhat  
4 surprised, because I don't recall us discussing it prior to  
5 this.

6 **Q.** Okay. But by this point you understood that having  
7 someone from ATN call Mr. Metelskiy was important to Mr. Beker?

8 **A.** At this point, yes.

9 **Q.** Okay. Now let move forward to page 10, at line 13 Mr.  
10 Beker says to you:

11 "I didn't ask yesterday, but today I  
12 realize that you still have some money  
13 left. You didn't tell me anything, the  
14 ones the were paid."

15 And you replied: "What do you mean?"

16 He said:

17 "Well, you paid for something and  
18 didn't receive something."

19 And you answer: Absolutely correct. I understand."

20 Now, Mr. Beker was talking about goggles, isn't that  
21 right?

22 **A.** Yes.

23 **Q.** Goggles in Russia?

24 **A.** Yes.

25 **Q.** The goggles and components that NPZ had in Russia?

1 A. Yes.

2 Q. And some of those, some of that equipment ATN had already  
3 paid for?

4 A. Yes.

5 Q. And so was owed to ATN at that point, isn't that right?

6 A. Yes.

7 Q. And Mr. Beker added:

8 "But you didn't tell me anything  
9 about this. I, like, found out from that  
10 side."

11 He found out from someone in Russia, right?

12 A. Yes.

13 Q. And you responded on the next page, page 11, line 1:

14 "They will return it somehow."

15 What was the "it" that they would return?

16 A. Well, we were talking about the money. So I was saying  
17 that they could possibly return the money.

18 Q. What about the goggles?

19 A. Not in this moment, no.

20 Q. Okay. And your conversation continued with Mr. Beker. In  
21 fact, he says on page 12, beginning at line 2:

22 "Well, Dima, be serious. What  
23 dough? What money? They don't have  
24 anything. Everything has been shit out a  
25 long time ago, spent a long time ago.

1 Well, God willing, one would retrieve the  
2 devices. I, I don't know. That is to  
3 say... I wouldn't have been so sure."

4 And Mr. Beker was telling you that in his view any money  
5 that you had sent to NPZ was gone, isn't that right?

6 **A.** It was his view, yes.

7 **Q.** But that maybe you would be able to recover some of the  
8 goods there, the goggles or the components?

9 **A.** I'm not sure whether he's referring to us recovering the  
10 components -- not components, but the actual goggles. Whenever  
11 we're getting components, it was assembled goggles.

12 **Q.** Okay. Are you suggesting that he was -- that he was  
13 expressing his interest in obtaining the inventory from NPZ?

14 **A.** I don't know. It says here one would.

15 **Q.** Directing your attention to page 17. Later in the  
16 conversation beginning at line 14 Mr. Beker says:

17 "But after all, in a good way, we  
18 don't have any paper that would be signed  
19 to the effect that you and I have reached  
20 an agreement, isn't that so?"

21 And you respond:

22 "Well, you want to make some  
23 contract as well?"

24 And Mr. Beker says:

25 "That is to say, I... I... no, no.

1 I can tell you so as well that I'll  
2 transfer the money to you, but it seems  
3 that you and I have no agreement about  
4 anything."

5 Mr. Beker was telling you he'd go ahead and transfer the  
6 \$50,000 to you, but there still was no agreement between the  
7 two of you about exactly what you were supposed to do, isn't  
8 that right?

9 **A.** What he means here is written agreement.

10 **Q.** Okay. And that's what he wanted?

11 **A.** Yes. Later on, I understand, yes.

12 **Q.** And so then later on at page 20, line 15 Mr. Beker says:

13 "What got me worried, I told you the  
14 most important thing: That if we reached  
15 an agreement that you somehow act  
16 differently from what we agreed, then I  
17 don't understand how I can proceed  
18 further. I am accustomed that I... that  
19 I will, in fact, do what we agreed upon."  
20 You say: I have got everything so..."  
21 And he continues:

22 "If I want to do something  
23 different, I'll ask."

24 Now, part of his conversation here, part of his statement  
25 here was referring to his problem with the way you sent the

1 invoices to him, isn't that right?

2 **A.** Yes.

3 **Q.** He was concerned that you hadn't followed what he thought  
4 were his clear instructions about how you were supposed to send  
5 the invoice to him?

6 **A.** I think here he was -- it was very important that in the  
7 future I take orders from him.

8 **Q.** Do it -- do what he asked you to do?

9 **A.** Yes.

10 **Q.** And he goes on, on the next page, page 21, beginning at  
11 line 3 he says:

12 "All right, the money. I'm telling  
13 you once again, I believe that, after  
14 all... I believe that we need some,  
15 because of what... I apologize for what  
16 I'm about to say. I have already  
17 apologized 100 times, but because of what  
18 happened now, I think that we need some  
19 paper for us to sign... together with  
20 this invoice, that which we agreed on,  
21 that which we take over this contract  
22 till the end... with it, we... you guys  
23 do everything to help us fulfill it. We  
24 do everything to help you guys fulfill  
25 it."

1 And, again, he's referring here -- he's saying that he  
2 wants a written agreement, isn't that right?

3 **A.** Yes.

4 **Q.** And he's saying one of the reasons that he wants that  
5 written agreement is that he's still uneasy about what happened  
6 with the invoice?

7 **A.** Yes.

8 **Q.** And you ask him, line 15:

9 "Do you want to send it to me?"

10 He responds:

11 "You think I know what should be in  
12 there?"

13 And you respond:

14 "You think I know what should be in  
15 there? You, you... you, in fact,  
16 understand what you are talking about?

17 You want this to..."

18 So when you say, "Do you want to send it to me," you're  
19 suggesting that he draft the agreement and send it to you,  
20 isn't that correct?

21 **A.** Yes.

22 **Q.** And he responds that he's not sure what should be in  
23 there, right?

24 **A.** Yes.

25 **Q.** And you say the same thing. You think I know what should



1 be in here? Because you don't know what should be in there  
2 either, right?

3 **A.** Well, because outlining an agreement like that could be an  
4 evidence a crime.

5 **Q.** Well, wouldn't that be just the perfect thing for the FBI  
6 to have?

7 **A.** Maybe.

8 **Q.** Oh, okay. Mr. Beker says:

9 "That tomorrow when I'll send with  
10 this letter."

11 And -- I'm sorry. He begins at the bottom of line 21 by  
12 saying that:

13 "Tomorrow when I send with this  
14 letter."

15 Going on to the next page, you say, "Well."

16 And he says:

17 "Ah, the first thing I will be told,  
18 and... are you going to deliver in  
19 accordance with this contract? And I say  
20 yes. And how would we know?"

21 He's referring to NPZ's reaction to him taking over the  
22 contract, isn't that right?

23 **A.** I'm not clear about this here.

24 **Q.** All right. But he goes on.

25 And you say: "You mean where?"

1 And he says:

2 "Well, there, where all this is  
3 lying about. They are waiting. They  
4 know that one way or another, somebody is  
5 going to fulfill this contract one way or  
6 the other."

7 Does that clarify it for you?

8 **A.** Yes.

9 **Q.** He's talking about the goggles?

10 **A.** Yes.

11 **Q.** With NPZ?

12 **A.** Yes.

13 **Q.** He thought it was important that NPZ understand that he  
14 potentially was stepping in to take over the contract, isn't  
15 that right?

16 **A.** My understanding, when I saw the written agreement later,  
17 that was not for the eyes of the NPZ.

18 **Q.** Well, at this point in time didn't you understand that he  
19 was looking for cooperation from NPZ?

20 **A.** I think he was using that as an excuse to get the written  
21 contract.

22 **Q.** At this point in time wasn't he asking or expressing his  
23 need for cooperation from NPZ?

24 **A.** Yes.

25 **Q.** Then on the next page, page 23, he adds:

1 "I think that maybe you simply write  
2 freely what we decided concerning this  
3 contract. You can write everything that  
4 you want. If you want to write there  
5 everything the way it looks, the amount,  
6 well, money and so on... a mini  
7 contract."

8 And, again, this is Michael referring to the proposed  
9 written contract, right?

10 **A.** Yes.

11 **Q.** And he's proposing that you draft it?

12 **A.** Yes.

13 **Q.** And he's telling you, you can put everything in there?

14 **A.** Yes.

15 **Q.** You can put in the amount?

16 **A.** Yes.

17 **Q.** And what's he referring to by amount? What was your  
18 understanding of what he was referring to?

19 **A.** The amount that we agreed per goggle.

20 **Q.** Okay. And the money? How much would be paid for the  
21 goggles?

22 **A.** We did not discuss that, that -- oh, you mean per the  
23 goggles? Yes. I'm assuming that this including the advance  
24 payment.

25 **Q.** Everything would be in the agreement?

1 A. At this point, yes.

2 Q. Okay. And then you say to him:

3 "Do you hear what you're talking  
4 about?"

5 And he says: "But I think it is bad."

6 And you say: "Well, of course it's bad."

7 So here it sounds as though he's saying, geeze, what's  
8 going on? This is a bad idea, right?

9 A. Yes.

10 Q. But beginning at the very next page, he says -- and this  
11 is the top of page 24, he says: "But I'm talking about two."

12 He's talking about two different writings, isn't that  
13 right?

14 A. At this point, yes.

15 Q. And one of the writings was the proposed -- a letter from  
16 Russian customs, right?

17 A. Yes.

18 Q. And the other writing was the written agreement, right?

19 A. Yes.

20 Q. And you say:

21 "Well, that is to say I don't have  
22 any problems with the paper that I need  
23 to get in order to cover my ass with  
24 Ramzi, as they say."

25 In that you're referring to the force majeure letter?

1 **A.** Yes.

2 **Q.** But then you go on and you say:

3 "And the second paper that you're  
4 talking about."

5 Mr. Beker responds:

6 "The second paper, one needs to  
7 understand in what form we can... we can  
8 sign it."

9 And that second writing, that was the written agreement?

10 **A.** Yes.

11 **Q.** And so he's still talking about having a written  
12 agreement, about your agreement with him?

13 **A.** Yes.

14 **Q.** And he's still talking about signing that written  
15 agreement, right?

16 **A.** Yes.

17 **Q.** And then he asks:

18 "Or you don't want to? After all, I  
19 don't insist. I'm telling you once  
20 again. It's important for me to  
21 understand your position."

22 And you respond: "I wouldn't want to do it."  
23 Isn't that right?

24 **A.** Yes.

25 **Q.** You didn't want a written agreement?

1 A. No.

2 Q. And then you say on the next page, beginning at line 2:

3 "As you understand only too well,

4 ah... as is said by ah... friendly

5 rabbis, this is not kosher."

6 Right?

7 A. Yes.

8 Q. And "kosher" is your word, right?

9 A. Yes.

10 Q. And you ask him:

11 "Or you... well, you don't agree

12 with me?"

13 And Mr. Beker explains:

14 "Well, if we are to talk about the

15 money, yes. If we are to talk about the

16 principle as a whole, then no. That is

17 to say, they can be separated, these

18 issues, because..."

19 And you say:

20 "And I agree. I don't quite... I

21 don't quite understand. How so?"

22 And he goes on. Mr. Beker goes on. He says:

23 "Let's put it this way. If we reach

24 an agreement about something, this is

25 kosher. But if it is also connected with

1 the money, this is no longer kosher."

2 And you took that to mean that a written agreement was  
3 okay in his view unless it involved money, right?

4 **A.** Yes.

5 **Q.** And that if it involved money somehow it wasn't kosher any  
6 more?

7 **A.** Yes.

8 **Q.** But Mr. Beker goes right back to pressing for a written  
9 agreement that's signed by both parties, isn't that right?

10 **A.** Yes.

11 **Q.** And finally you respond to him at page 26, line 4. You  
12 say:

13 "Well, let's put it this way. Do  
14 you mind if I were to give you something  
15 like that... after I at least receive the  
16 money?"

17 And the "something like that" that you're referring to is  
18 a signed written agreement, isn't that correct?

19 **A.** Yes.

20 **Q.** And you're telling him, send me the money first and I'll  
21 sign the agreement later, right?

22 **A.** That's not what I'm saying.

23 **Q.** Okay. With regard to the force majeure letter, let me  
24 direct your attention to the bottom of page 27, carrying over  
25 to 28.

1       You had been talking about the force majeure letter with  
2 Mr. Beker, and at this point in the conversation you said:

3               "Therefore, after all, you will need  
4 specifically the number of the contract,  
5 when and what."

6       The contract you are referring to is your contract with  
7 NPZ?

8 **A.**   Yes.

9 **Q.**   And you're talking about including the contract number in  
10 a draft of the force majeure letter, right?

11 **A.**   Yes.

12 **Q.**   Because at that point in time Mr. Beker did not have that  
13 contract number?

14 **A.**   No.

15 **Q.**   Now, that conversation occurred on the morning of  
16 September 2nd, right?

17 **A.**   Yes.

18 **Q.**   And shortly thereafter you had a second conversation with  
19 Mr. Beker on September 2nd?

20 **A.**   Yes.

21 **Q.**   And in that conversation beginning on page 3, line 14, Mr.  
22 Beker says:

23               "So all this is possible. The only  
24 thing is this. I thought, we'll prepare  
25 a draft now from our side, the way I



1 think this document should look."

2 You respond: "Um-hum."

3 And he says: "We'll seen it to you by email."

4 You say: "Well?"

5 And he says:

6 "You'll look at it. What you don't

7 like... you'll tell."

8 And you say: "Well?"

9 And he adds:

10 "Well, and we'll sign it. The order

11 to transfer, I prepared and signed it.

12 That is to say, what's left is for you

13 and me to decide about this paper."

14 And when Mr. Beker said that we'll prepare a draft now  
15 from our side, that was a draft of the proposed agreement?

16 **A.** Yes.

17 **Q.** And, again, he said "draft," right?

18 **A.** Yes.

19 **Q.** And he said:

20 "It's the way I think this document

21 should look?"

22 In other words, what he thought would be important in the  
23 agreement?

24 **A.** Yes.

25 **Q.** And -- but he told you that you'll look at it. What you

1 don't like, you'll tell. And he meant tell him, right?

2 **A.** Yes.

3 **Q.** He was giving you a chance to add what you thought was  
4 important to the agreement?

5 **A.** Yes.

6 **Q.** And then he said:

7 "We'll sign it. The order to  
8 transfer, I prepared and signed it. That  
9 is to say, what's left is for you and me  
10 to decide about the paper."

11 So he said he was prepared to transfer the money to you,  
12 is that right?

13 **A.** Yes.

14 **Q.** But that what remained was for you and him to decide about  
15 the agreement, right?

16 **A.** That's what I'm clarifying later on, yes.

17 **Q.** He wanted you to look at his proposed agreement and  
18 suggest your changes so that you could reach a mutually  
19 acceptable set of terms, right?

20 **A.** He wanted some sort of document from me in writing.

21 **Q.** And he offered to let you put what terms you thought were  
22 important in it, didn't he?

23 **A.** Yes.

24 **Q.** And he continued on the same thing:

25 "And you and I have to sign the

1 paper. The paper is being prepared now,  
2 a draft."

3 And, again, your understanding was that the paper was a  
4 written agreement?

5 **A.** Yes.

6 **Q.** And, again, he makes it clear he's talking about a draft,  
7 right?

8 **A.** Yes.

9 **Q.** And he says:

10 "The essence of this issue is that  
11 we have to retrieve, to help, to  
12 transfer... well, so forth. Everything  
13 that is connected with this issue.  
14 Because it so happens that we have no  
15 agreement at all on paper about the very  
16 fact of the transfer of this contract to  
17 Newcon."

18 Now, when he said "we have to retrieve," he was talking  
19 about the goggles at NPZ, wasn't he? Retrieve the goggles from  
20 NPZ?

21 **A.** Possibly.

22 **Q.** And when he says "to help," he was looking for help from  
23 you, isn't that right?

24 **A.** Once again, we were talking about the document that would  
25 be just like a loan; not exactly outlining what the true, the

1 agreement was.

2 Q. When he asked -- when he said "to help," he was talking  
3 about ATN helping, isn't that right?

4 A. ATN helping to Newcon?

5 Q. Yes.

6 A. My understanding that ATN had to just not to deliver.  
7 That was the agreement.

8 Q. And he says "to transfer." He was talking about  
9 transferring the contract?

10 A. I'm not clear here on that.

11 Q. Okay. But he's talking about transferring something,  
12 right?

13 A. Yes.

14 Q. And he elaborates by saying:

15 "Everything that is connected with  
16 this issue."

17 Right?

18 A. Yes.

19 Q. And you say -- you respond at lines 18 and 19:

20 "I understand everything only too  
21 well, but you and I did agree that  
22 it's... after the money."

23 In other words, you want to get paid first?

24 A. Yes.

25 Q. And you add at lines 23 and 24:

1 "But I'm not against it. I told you  
2 that we would do everything."

3 The "it" was the written agreement, right?

4 **A.** The "it" was what we agreed before, that ATN will not  
5 participate for the remainder of the deliveries.

6 **Q.** Well, he was just talking about what should be in the  
7 written agreement. And you say:

8 "I am not against it. I told you  
9 that we would do everything."

10 You're talking about the written agreement there, aren't  
11 you?

12 **A.** Can you scroll down a little bit?

13 **Q.** Pardon?

14 **A.** Could you scroll down a little bit?

15 **Q.** You mean, to the next page?

16 **A.** This is the end of the page. Yes, please.

17 **Q.** Okay. Let's go to the next page.

18 And Mr. Beker says: "Now I will give."

19 You say: "But it's clear."

20 "We are losing... we are only losing  
21 time. So it will be left for the next  
22 week then."

23 Right?

24 **A.** Yes.

25 **Q.** He's expressing to you that the time is important in this

1 arrangement, right?

2 **A.** Yes.

3 **Q.** Because you have a deadline of October 15th to complete  
4 the deliveries, isn't that right?

5 **A.** Well, there, I think, it was more conversation about the  
6 time difference between Russia and U.S.

7 **Q.** Well, certainly, there is a time difference; but at this  
8 point in time he's saying we are only losing time. And the  
9 time that you're losing is the time to get the deliveries done  
10 by October 15th, isn't that correct?

11 **MS. HAMILTON:** Your Honor, the witness has answered  
12 the question.

13 **MR. HOWDEN:** I don't think he has.

14 **THE COURT:** Objection is overruled.

15 Do you understand the question?

16 **THE WITNESS:** Yes.

17 **THE COURT:** You may answer it.

18 **A.** I think the time here was about the time difference that  
19 he wanted to contact someone in Russia.

20 **BY MR. HOWDEN**

21 **Q.** Okay. And -- well, let's take a look at it. You go on:

22 "Well... well, on Tuesday now we are  
23 dealing with... with this paper."

24 By the "paper," you're referring to the written agreement,  
25 isn't that right?

1 **A.** No. I was talking here back to the force majeure letter.  
2 And that's why he had to contact Russia.

3 **Q.** Okay. And he adds:

4 "But I'm flying away on Friday so  
5 that, you know, if I don't manage to do  
6 it on Tuesday and Wednesday... Tuesday is  
7 here, and there it remains Wednesday and  
8 Thursday. That is to say, practically  
9 two days. That's the question."

10 In other words, he would be losing two days, right?

11 **A.** Yes.

12 **Q.** Losing two days to meet the October 15th deadline, isn't  
13 that right?

14 **A.** Possibly.

15 **Q.** And on that page, at line 20, you say:

16 "The draft, okay. You can send the  
17 draft. I'll look at it. I'll sign, if  
18 you don't mind, on Tuesday or when?  
19 Well... (pause) Hello?"

20 And I take it that you -- that writing you're  
21 referring to is the force majeure letter?

22 **A.** Here we're already talking back to the written agreement.

23 **Q.** Oh, okay. And you say:

24 "I'll sign it, if you don't mind, on  
25 Tuesday or when."

1 Right?

2 **A.** Yes.

3 **Q.** You're agreeing to sign the writing?

4 **A.** After I will read the draft.

5 **Q.** Okay. And Mr. Beker adds:

6 "That is to say, you insist, after  
7 all, first to receive the money and then  
8 to sign."

9 And you say yes, right?

10 **A.** Yes.

11 **Q.** And then he says:

12 "Okay. Then we will do an  
13 intermediary version. You and I will  
14 coordinate this text."

15 Again, this is another way of him saying that he'll send  
16 you a draft?

17 **A.** Yes.

18 **Q.** And when he says "you and I will coordinate the text,"  
19 he's saying that you and he will work together to work out the  
20 final terms, right?

21 **A.** That I will need to prior to signing -- my understanding  
22 was that I will prior to signing will need to be agreeing on  
23 the text.

24 **Q.** Right. And contributing to whatever you think needs to be  
25 in the draft, right?



1 **A.** Possibly.

2 **Q.** And he says it again, lines 7 and 8:

3 "And then I will transfer the money  
4 so that I would know that... the next  
5 that we coordinated, you'll sign."

6 And when he says "the text that we coordinated," again,  
7 he's referring to a written agreement that you both contribute  
8 to?

9 **A.** Yes.

10 **Q.** And you agreed?

11 **A.** Yes.

12 **Q.** And continuing with the conversation on page 7 at line 7,  
13 Mr. Beker says:

14 "It is needed that Mr. Gaber pick up  
15 the phone and Metelskiy."

16 And, again, Gaber is one of your partners?

17 **A.** Yes. It's a supplier.

18 **Q.** And Mr. Metelskiy is with NPZ, your supplier?

19 **A.** Yes.

20 **Q.** And Mr. Beker wants Gaber to call NPZ, correct?

21 **A.** Yes.

22 **Q.** And you question him at line 13 and 14:

23 "But... and you... that is to say,  
24 before you transfer the dough?"

25 So you're asking him whether or not that call should be

1 made before -- or needs to be made before the money is actually  
2 transferred to you, correct?

3 **A.** Yes.

4 **Q.** And Mr. Beker says: "No, I trust you."

5 And then he adds at line 17 and 18:

6 "If he doesn't do it, you will  
7 return the money to me."

8 The "it" that he's refusing to is having Gaber call  
9 Metelskiy, isn't it?

10 **A.** Yes.

11 **Q.** It's important, right?

12 **A.** I think it was important for him because that would be a  
13 sign that we're all on the same page and ATN will cooperate.

14 **Q.** It was so important to him that, in his view, the deal  
15 would be off if it didn't occur, right?

16 **A.** Yes.

17 **Q.** And what he wanted Mr. Gaber to tell Mr. Metelskiy he  
18 expresses beginning at line 20:

19 "...to pick up the phone, to call  
20 him and to say, from now on... please,  
21 everything that originates from Mikhail  
22 Lvovich, this is my name."

23 And it goes on. You discuss the Russian names and he  
24 continues at page 4, the next page -- or line 4, I'm sorry, of  
25 the next page:

1 "That these are our activities that  
2 are coordinated with them and further, go  
3 head... please, do that... which is  
4 better for all of us."

5 Right?

6 In the first part of that quote, he's -- he's saying that  
7 he needs Gaber to tell Metelskiy that Newcon is now handling  
8 the contract, right?

9 **A.** Yes.

10 **Q.** And that NPZ should now work with Newcon on this project?

11 **A.** They should coordinate with them.

12 **Q.** Okay. And the only way that NPZ could coordinate with  
13 Newcon is to do the only thing that they were doing for ATN,  
14 which is to supply him with goggle parts, right?

15 **A.** The only thing NPZ did with ATN, they were supplying  
16 goggles, not goggle parts.

17 **Q.** Okay. So he wanted goggles supplied from NPZ to Newcon?

18 **A.** Still not clear here about it. My understanding at this  
19 point, that if Lenny would call NPZ, that would be an act of  
20 confirmation that me and Lenny are on the same page.

21 **Q.** What in the world else could Mr. Beker be interested in in  
22 NPZ other than that which they had and were supposed to give to  
23 ATN?

24 **A.** Just what I said a second ago; that would be a  
25 confirmation of our agreement.

1 Q. Okay. Mr. Beker adds, beginning at line 8 going through  
2 line 10:

3 "Because in case he doesn't do it  
4 then for me, I'm telling in advance, it  
5 will be extremely hard to continue this."

6 And the "this" is to move forward with the proposed  
7 agreement that Newcon begin supplying under the contract,  
8 right?

9 A. "This" means paying for it.

10 Q. Paying for what?

11 A. For ATN not to perform for the remainder.

12 Q. And it contemplated -- your agreement contemplated Newcon  
13 taking over, right, and fulfilling the contract?

14 A. Somehow, yes.

15 Q. Somehow, right?

16 A. Yes.

17 Q. And Mr. Beker is telling you that in order for Newcon to  
18 fulfill the contract, they need cooperation from NPZ, isn't  
19 that right?

20 A. He's telling me that he wants Lenny to call Metelskiy.

21 Q. To cooperate with Newcon, isn't that right?

22 A. I don't know.

23 Q. Mr. Beker stays on this point, page 9 beginning at line 4  
24 he says again to you:

25 "It is sufficient for him to call

1 him and say that everything is okay, we  
2 reached an agreement about everything.  
3 Further... all... the entire coordination  
4 goes through Newcon, Beker and that's  
5 it."

6 Now, you've already testified that the first "him" there  
7 is Mr. Gaber, is that right?

8 **A.** Yes.

9 **Q.** And the second "him" there is Mr. Metelskiy, right?

10 **A.** Yes.

11 **Q.** So it's sufficient for Gaber to call Metelskiy and to say,  
12 "...that everything is okay, we reached an agreement." And the  
13 "we" there is Newcon and ATN, right?

14 **A.** Yes.

15 **Q.** So that Newcon and ATN reached an agreement about  
16 everything?

17 **A.** Yes.

18 **Q.** And, further, that the entire coordination goes through  
19 Newcon, Beker and that's it?

20 **A.** Yes.

21 **Q.** Why in the world would it be so important to Mr. Beker to  
22 contact NPZ and to tell him -- to make sure that NPZ understood  
23 that Beker had the contract, if it wasn't to get NPZ's  
24 equipment from them?

25 **A.** I think that's a great question for Mr. Beker.

1 Q. Okay. Thank you very much.

2 And, again, he reiterates at line 16, that if the call  
3 isn't made, you'll return the money to him, right?

4 A. Yes.

5 Q. Now, following this second conversation on September 2nd,  
6 Mr. Beker sent you the draft agreement, is that correct?

7 A. Yes.

8 Q. And you received it on September 2nd?

9 A. Yes.

10 Q. And you didn't respond to him about it?

11 A. No.

12 Q. You didn't redraft it?

13 A. No.

14 Q. You certainly didn't sign it?

15 A. No.

16 Q. You didn't call him up and say, Hey, what is all this?  
17 This is ridiculous. We need to change the terms of this?

18 A. No.

19 Q. You just sat on it?

20 A. Yes.

21 Q. And waited?

22 A. Because the letter was -- would be extremely damaging to  
23 ATN, in my view.

24 Q. Okay. But you made no effort whatsoever to change its  
25 terms to make it less damaging to ATN, did you?

1 A. No.

2 Q. And as a result, on September 7th -- what's that, five  
3 days later -- Mr. Beker called you back?

4 A. Yes.

5 Q. And you ended up returning his call? I think that's the  
6 way the sequence went?

7 A. I think so, yes.

8 Q. Okay. And during that preceding five days, nothing had  
9 happened with respect to the draft?

10 A. No.

11 Q. And when you spoke to Mr. Beker on the 7th, he told you at  
12 page 3, beginning at line 20:

13 "But since you didn't react to me,  
14 to my email, the way I understand it, you  
15 either didn't read it or you don't want  
16 to react, and I'm flying away on Friday."

17 The email he was referring to, you understood that that  
18 was the email that had the agreement attached to it, correct?

19 A. Yes.

20 Q. And when he says, "you didn't read it or you don't want to  
21 react," he's referring to the draft of the agreement, right?

22 A. Yes.

23 Q. And when he told you he was leaving on Friday, he was  
24 flying away on Friday, that meant he was leaving town, right?

25 A. Yes.

1 Q. And at that point you told him that you've got the letter,  
2 and you went on to explain how you couldn't possibly sign it  
3 because it was so damaging and one sided to ATN, right?

4 A. I did.

5 Q. And on page 5, beginning at line 6, you added that:

6 "I agree to the following. I'll  
7 make a call myself to TACOM."

8 Right?

9 A. Yes.

10 Q. And that was your suggestion, right?

11 A. Yes.

12 Q. Mr. Beker hadn't suggested it in any way, shape or form  
13 that you call TACOM, right?

14 A. No.

15 Q. And you went on and told him some additional reasons why  
16 you thought this was a bad draft, a bad agreement.

17 And at line 21, you point out to him:

18 "If you take the money out of the  
19 thing, this doesn't make sense."

20 Right?

21 A. Yes.

22 Q. Because he hadn't mentioned money, at least not the  
23 \$50,000 or \$75 per pair of goggles. He hadn't mentioned that  
24 in the draft agreement, right?

25 A. Yes.



1 Q. But you didn't offer to put those terms in, right?

2 A. No, I did not.

3 Q. You didn't make any effort to put those terms in?

4 A. No.

5 Q. And you don't know what Mr. Beker's reaction would have  
6 been if you had put those terms in?

7 A. No.

8 Q. And you went on. On page 6 beginning on line 3, you add:

9 "There's no need. There's no need  
10 for Loktionov to call Metelskiy and talk  
11 about the fact that we have already  
12 reached an agreement about everything."

13 Now, there, Mr. Loktionov is the principal at Katod,  
14 right?

15 A. Yes.

16 Q. That's the image intensifier tube manufacturer that was  
17 working with Newcon?

18 A. Correct.

19 Q. And Mr. Loktionov, again, is another one of those  
20 businessmen located in Novosibirsk?

21 A. Yes.

22 Q. And, again, Metelskiy is NPZ, right?

23 A. Yes.

24 Q. So you were saying there's no need for Loktionov, Mr.  
25 Beker's partner, to call Metelskiy at NPZ and tell them about

1 the agreement that you have reached, right?

2 **A.** Yes.

3 **Q.** This despite the fact that Mr. Beker had made it very  
4 clear that he was very interested in having someone tell NPZ  
5 that Newcon was now running the contract, right?

6 **A.** Would you repeat the question?

7 **Q.** Well, let me ask a better question, because that was a  
8 really long one.

9 You were telling Mr. Beker that there is no need for NPZ  
10 to know about your agreement with Newcon?

11 **A.** Yes, because it was not an agreement yet. The agreement  
12 was to take a first step and transfer the money.

13 **Q.** So at this point on September 7th, 2005, you and Mr. Beker  
14 still didn't have an agreement?

15 **A.** The agreement was not there for -- we did not discuss the  
16 NPZ.

17 **Q.** And Mr. Beker tried to explain his point of view to you.  
18 Beginning at line 18 -- actually, let's start with the whole  
19 quote at line 17:

20 "The first thing is the preamble."

21 Now, the "preamble" refers to an actual term in the draft  
22 agreement, isn't that right?

23 **A.** Yes.

24 **Q.** So he's talking about the draft agreement?

25 **A.** Yes.

1 Q. Okay.

2 "The first thing is the preamble.

3 In the email itself it is written, please  
4 confirm or comment, okay?"

5 Mr. Beker was pointing out to you that he wanted you  
6 either to agree or to comment on what they had put in the  
7 draft, right?

8 A. Would you repeat that? I'm sorry.

9 Q. Mr. Beker was pointing out to you that they had asked you  
10 either to confirm or comment what was in the draft that they  
11 had sent to you?

12 A. Yes.

13 Q. And you never did comment or offer your suggestions as to  
14 what should go in that draft, right?

15 A. Prior in this conversation I commented that I could not  
16 sign the agreement like this.

17 Q. Right. You just said, you can't sign it, end of story?

18 A. Well, I was going to explanation why, but I wasn't  
19 planning to sign it.

20 Q. And you weren't planning on adding any additions of your  
21 own, right?

22 A. No.

23 Q. And he pointed out to you further, he said:

24 "You know only too well that you  
25 were not ready to write anything."

1 Right? He actually had pointed that out to you earlier;  
2 that you weren't ready to write the agreement yourself?

3 **A.** Yes.

4 **Q.** And he went on and said:

5 "I asked to prepare what I deemed  
6 necessary."

7 He was telling you that he drafted what he thought the  
8 most important things were.

9 **A.** Yes.

10 **Q.** And he goes on at line 23:

11 "I tried to provide some kind of  
12 base. Why? For... for what?"  
13 Continues on to the next page.

14 "Reasons you guys can't continue you  
15 to fulfill this contract, in order, from  
16 my point of view, to leave your face more  
17 or less... well, if not beautiful, well,  
18 then at the very least clean."

19 **Q.** He was telling you that, at least from his point of view,  
20 he was trying to write a draft agreement that wouldn't be so  
21 harmful to you, right?

22 **A.** Right.

23 **Q.** You disagree though?

24 **A.** Yes.

25 **Q.** And then on that page, going down to line 14, Mr. Beker

1 said:

2 "As for the calls, Metelskiy came,

3 I'm just telling you."

4 And you said: "Well, yes?"

5 Beker says: "Together with Aksenov to Loktionov."

6 And just so we're clear, Metelskiy is NPZ, right?

7 **A.** Yes.

8 **Q.** Aksenov is Ekran FEP?

9 **A.** Yes.

10 **Q.** And Loktionov is Katod?

11 **A.** Yes.

12 **Q.** All in Novosibirsk?

13 **A.** Yes.

14 **Q.** And Mr. Beker says:

15 "Nobody called anybody. They were

16 there, at his place, as guests, and

17 discussed it. And on the contrary, they

18 said that Lyonya" -- that's Mr. Gaber?

19 **A.** Yes.

20 **Q.** (Continuing) -- "...was the one who called."

21 And then you added:

22 "Yes, they wished him a happy

23 birthday."

24 **A.** Yes.

25 **Q.** How did you know they wished him a happy birthday?

1 **A.** I had a conversation with Lenny Gaber around that time  
2 when he told me that, yes, Metelskiy, Aksenov and Loktionov  
3 were -- Aksenov and Loktionov in the past worked together and  
4 they suspected that it was Loktionov who orchestrated, in part,  
5 the -- all troubles in the customs. And they came to his  
6 birthday, to the extent asking him, how could you do this?

7 **Q.** So now you're saying that Mr. Gaber told you that it was  
8 Mr. Loktionov at Katod who caused the problems with customs?

9 **A.** Well, he was, in part, responsible for it.

10 **Q.** Okay. Later on in the conversation at page 9, beginning  
11 at line 6, you said:

12 "I told him that currently I don't  
13 have an agreement, that's why, and I want  
14 to take it one step at a time. First,  
15 you make a payment, and then I'll make a  
16 call to the TACOM, and then we will be  
17 sorting out things with Russia."

18 Mr. Beker responds:

19 "You see, the fact that you will  
20 make a call to TACOM, that is to say, I'm  
21 not certain that's the best thing. This  
22 is... ah, to work with them on the phone  
23 calls."

24 Again, you're the one who suggests calling TACOM, correct?

25 **A.** Yes.

1 Q. And Mr. Beker at this point is telling you he's not sure  
2 that's a good idea, right?

3 A. Yeah. He would prefer sending something in writing.

4 Q. Okay. Thank you.

5 A. You're welcome.

6 Q. Later on in the conversation at page 12, beginning at line  
7 20 you say to Mr. Beker:

8 "So I'm begging you for now. There  
9 is no need to make anyone in Russia privy  
10 to this. It should not, ah, go further  
11 than it should be, right?"

12 A. Yes.

13 Q. You didn't want NPZ to know that you and Newcon had  
14 reached some sort of an agreement, right?

15 A. No.

16 Q. But that was a fact, that was an important fact with Mr.  
17 Beker in continuing with that project, right?

18 A. That's not the question for me.

19 Q. On the next page, page 13, beginning at line 8, Mr. Beker  
20 said:

21 "I gave valuable instruction,  
22 appropriate ones. It stays on hold. I  
23 talk with people. I communicate with  
24 people. With people I try to find a  
25 solution for this issue. In order not to

1 waste time, I asked, on my side, to give  
2 me the information, like how many  
3 finished devices there are. How am I  
4 supposed to get ready to this quantity?  
5 Do you understand? Nothing else."

6 When Mr. Beker said, "how many finished devices," he was  
7 talking about goggles?

8 **A.** Yes.

9 **Q.** Goggles that NPZ had?

10 **A.** Yes.

11 **Q.** And when he said:

12 "How am I supposed to get ready to  
13 this quantity, he was talking about the  
14 quantity of goggles to be delivered under  
15 the Battalion Set II contract, isn't that  
16 right?

17 **A.** Yes.

18 **Q.** Then he adds, beginning at line 19:

19 "But you guys, on your side, decided  
20 differently. Lyonya" -- again that's  
21 Gaber, correct?

22 **A.** Yes.

23 **Q.** (Continuing)

24 "...with his, the way he knows, fuck  
25 it, one needs nothing. Let them go fuck



1 themselves. Okay, but I can say it, too.

2 Well, all right, you don't want to, but

3 let's wait until the end. That's it."

4 And what he's talking about is the failure of Lyonya or  
5 anybody else at ATN calling NPZ, right?

6 **A.** Yes.

7 **Q.** And then at page 15, beginning at about line 9, Mr. Beker  
8 tells you,

9 "Of course, you can set some, but it's  
10 just that -- I -- proceeding from the fact  
11 that I already gave my word, I can't  
12 return, like, back. I promised to do that.  
13 I'll do it. You need to have the money  
14 transferred to you, I'll transfer it."

15 And it was at that point that Mr. Beker finally  
16 committed to sending you the \$50,000. Isn't that right?

17 **A.** Yes.

18 **Q.** So this is September 7th, correct?

19 **A.** Yes.

20 **Q.** This is five days after he's sent you the draft agreement?

21 **A.** Yes.

22 **Q.** At the time he sent you the draft agreement, no money had  
23 changed hands?

24 **A.** No.

25 **Q.** And you hadn't agreed on the terms of a written agreement?

1 A. No.

2 Q. But -- and finally, he sends you the money on  
3 September 7th, right?

4 A. Yes.

5 Q. And at this point in time, wouldn't it be fair to say  
6 that -- that Mr. Beker was not at all happy with the state of  
7 affairs between ATN and Newcon?

8 A. But he transferred the money.

9 Q. Right.

10 A. Yes.

11 Q. And right after he said this, he -- he added,

12 "I'm saying once again, but it still  
13 seems to me that you have to clearly  
14 explain to me now how it will happen, and  
15 what will happen, and -- and what are you  
16 hoping for, because I have this feeling  
17 that Lyonya drags out the time; it's not  
18 clear for what purpose."

19 He's trying to understand what ATN actually is going  
20 to do to help Newcon. Right?

21 A. He wants a confirmation that Lyonya is on the same page as  
22 me. And the only confirmation he can get is by NPZ. That's my  
23 understanding here.

24 Q. He still wanted Lyonya to call NPZ?

25 A. Yes.

1 Q. And he points out, right after that, lines 23 and 24,  
2 "After all, I'll be the one who'll have  
3 to fulfill the contract afterwards."  
4 Right?

5 A. Yes.

6 Q. He'll have to supply the goggles to ITE?

7 A. ITE? I think, time and time again, he indicates that he  
8 would not work with ITE.

9 Q. ITE had the contract. Isn't that right?

10 A. Yes.

11 Q. There wasn't anybody else to supply the goggles to at that  
12 point in time. Isn't that correct?

13 A. We can go back to the conversations. Time and time again,  
14 for different reasons, Michael said that he will not work with  
15 ITE.

16 Q. But it ultimately wasn't up to Michael, was it?

17 A. No.

18 Q. It was up to ITE?

19 A. And Michael -- if Michael wouldn't want to work with them,  
20 then how could we just opt to ITE?

21 Q. Well, if Michael didn't want to work with ITE, maybe he  
22 didn't get to work on the contract at all, right?

23 A. Maybe.

24 Q. So Michael wire transferred the \$50,000 to you shortly  
25 thereafter, correct?

1 A. Yes.

2 Q. And before the end of the conversation, he indicated to  
3 you that -- that he'd be traveling for two to three weeks?

4 A. Yes.

5 Q. And, in fact, didn't you receive the wire transfer the  
6 next day; on September 8th, I believe?

7 A. Yes.

8 Q. And on that same day -- on the 8th -- you had another  
9 conversation with Mr. Beker. Is that right?

10 A. Yes.

11 Q. And during the course of that conversation, Mr. Beker said  
12 to you, at page 6, beginning at line 15,

13 "And I will wait. If they deem it  
14 necessary, they'll find us. They'll know  
15 only too well where to look for us. I'm  
16 going to ask you, in accordance with our  
17 agreements, to tell Lyonya. Let him call,  
18 and tell what he deems necessary. It makes  
19 no difference to me; but basically, he has  
20 to say something, because" --  
21 -- carrying on to page 7 --

22 -- "they, themselves, don't know what  
23 to do now."

24 The "they" that he's referring to is NPZ. Isn't that  
25 correct?

1 A. Yes.

2 Q. And they need what to do -- know what to do, according to  
3 Mr. Beker, right?

4 A. Yes.

5 Q. And the only thing they do with respect to the  
6 Battalion Set II contract is to provide goggles, right?

7 A. Yes.

8 Q. And he emphasizes, beginning at line 15,

9 "Well, let's put it this way. First of  
10 all, a portion of our agreements consist of  
11 the fact that he would call and say; but I  
12 don't even, in this -- not in this  
13 connection -- the fact that it drags on --  
14 it's not in everybody's benefit."  
15 Right?

16 You answer, "I understand."

17 A. Yes.

18 Q. Again, Mr. Beker is referring to the fact that calling  
19 NPZ, at least in his understanding, was part of your agreement  
20 with him?

21 A. Yes.

22 Q. He stays on this theme. At page 8, beginning at line 17,  
23 he adds,

24 "If he doesn't want to call, let him  
25 not call. In fact, basically, I don't

1           fucking need them at all, in the big scheme  
2           of things. I am not going to deliver their  
3           devices."

4           When he says, "If he doesn't want to call," he's  
5           referring to Mr. Gaber. Isn't that right?

6   **A.**    Yes.

7   **Q.**    Mr. Gaber doesn't want to call Metelskiy?

8   **A.**    Yes.

9   **Q.**    Then he -- Mr. Beker -- doesn't need them at all. In the  
10   big scheme of things, he's not going to deliver their --  
11   NPZ's -- devices.

12           Is that right?

13   **A.**    Yes.

14   **Q.**    And -- and at some point during this conversation, you  
15   begin to -- to push back on this notion of -- of having NPZ  
16   coöperate with Newcon.

17           Beginning on page 9, line 4, you say,

18                   "I understand; but once again, I am  
19           repeating" --

20           And this goes on to page 10.

21                   -- "one more time to you, ah,  
22           naturally, we are interested in that. And  
23           now you already understand it clearly, in  
24           this -- that we still need these units.

25           And, ah, not even for that, but we need

1           them as the breath of life."

2           What you were telling Mr. Beker was that ATN still  
3 needed the NPZ goggles. Isn't that right?

4 **A.**    Yes.

5 **Q.**    It was important to your continued operation?

6 **A.**    Yes.

7 **Q.**    And you really didn't want NPZ to coöperate with Newcon in  
8 connection with this contract, right?

9 **A.**    No.

10 **Q.**   Your conversation continued. And at page 11, line 14,  
11 Mr. Beker said,

12                   "And the last thing I would probably  
13                   still ask you -- that draft that I sent  
14                   you" --

15                   That was the draft agreement --

16 **A.**    Yes.

17 **Q.**    -- that he sent to you on --

18 **A.**    September 2nd.

19 **Q.**    Thank you.

20           And he added,

21                   "Treat it really seriously. If you  
22                   want, cross out everything that you want.  
23                   If you don't want, don't cross it out; but  
24                   we still -- we'll have to sign something  
25                   eventually."

1           He was telling you you could make whatever changes  
2 you thought were necessary to the written agreement. Isn't  
3 that right?

4 **A.** But he never answers the question: What is it that he's  
5 intending to do with this document? Never.

6 **Q.** In this statement, he's telling you that you can change  
7 the agreement, and include whatever terms you want. Isn't that  
8 right?

9           **MS. HAMILTON:** Objection, your Honor.

10          **THE WITNESS:** Yes.

11          **MS. HAMILTON:** I mean, that's not what this passage  
12 actually says.

13          **THE COURT:** Well, that's -- the witness is the one to  
14 answer that.

15          **MS. HAMILTON:** I don't believe he was asked for what  
16 his understanding of it was.

17          **THE COURT:** The objection -- the objection is  
18 overruled.

19 **BY MR. HOWDEN**

20 **Q.** Mr. Beker goes on. On the next page, beginning at line 3,  
21 he says,

22                   "Well, yes. Frankly speaking, for now,  
23 I'm not very -- I -- I would say it this  
24 way. This is not -- not quite what you and  
25 I agreed to; and not because you don't want



1           it, because, unfortunately, this is not --  
2           this is not coöperation. This is not  
3           coöperation. I am not worried about the  
4           money that I transferred to you. I am  
5           simply stating a fact. There is a Russian  
6           proverb."

7           And you interject,

8                     "You believe that the fact that I  
9           called, and I said we no longer can  
10          perform" --

11          And Mr. Beker continued,

12                    "No. This is -- well, you would --  
13          Dima, you would have called either way, but  
14          you -- like, anyway, you have no choice.  
15          You can't deliver, either today or  
16          tomorrow."

17          Mr. Beker was looking for something more than just  
18          ATN telling TACOM that they couldn't perform under the  
19          contract. Isn't that true?

20       **A.**   That's possible.

21       **Q.**   He was looking for coöperation.

22       **A.**   That's possible.

23       **Q.**   Coöperation, in part, in dealing with NPZ?

24       **A.**   That's not clear to me.

25       **Q.**   And when you told him that,

1 "You believe the fact that I called,  
2 and that I said we no longer can  
3 perform" --  
4 -- you were referring to your call to TACOM?

5 **A.** Yes.

6 **Q.** The call that he never asked you to make?

7 **A.** But we agreed that I will make a call.

8 **Q.** Well, you'll have to point that out to us later; but at  
9 this point, he responds to you,

10 "Dima, you would have called, either  
11 way."

12 Isn't that right?

13 He means you would have called TACOM, no matter what?

14 **A.** That was his opinion, yes.

15 **Q.** Okay. And the reason that he said you would have called  
16 either way is that, in his view, you can't deliver, either  
17 today or tomorrow? Isn't that right?

18 **A.** That was -- yes. He was relating: That's why I should  
19 have called.

20 **Q.** Because ATN, in his view, couldn't perform under the  
21 contract?

22 **THE REPORTER:** Was that "Yes"?

23 **THE WITNESS:** I haven't answered. No.

24 **THE COURT:** What is your answer?

25 **THE WITNESS:** If you could, repeat the question.

1 **BY MR. HOWDEN**

2 **Q.** Because, in Mr. Beker's view, ATN could not have performed  
3 under the contract?

4 **A.** I'm not sure that he had the clear understanding of that.  
5 I think he knew that the troubles in Russia were temporary.  
6 And he knew that NPZ was working to resolve them. And that's  
7 why he agreed to pay for ATN not to perform.

8 **MR. HOWDEN:** Your Honor, I'd ask that that answer be  
9 stricken. It's totally nonresponsive, and based on nothing but  
10 speculation.

11 **THE COURT:** The answer is stricken.

12 The jury is instructed to -- you can say it  
13 together -- disregard it.

14 **BY MR. HOWDEN**

15 **Q.** And on page 15, Mr. Beker tells you, beginning at line 6,

16 "I don't know; but so far, I haven't  
17 heard anything. So you refuse to sign some  
18 papers to revise to look at the draft.  
19 So -- well, it's unclear as well. Now you  
20 are not there. Now you are not there. Now  
21 Lyonya, well, doesn't want to. Now, you  
22 guys, ah, like, need to get out of it. Now  
23 it turns out you need the devices now,  
24 well, and so forth. That is to say, you  
25 guys decide for yourselves what you want to

1 do."

2 When Mr. Beker said you refuse to sign some papers,  
3 he was referring to the written agreement, right?

4 **A.** Yes.

5 **Q.** And when he says "to revise," he's saying -- he's telling  
6 you that you refused to revise the written agreement?

7 **A.** Yes.

8 **Q.** To look at the draft? To even review the draft?  
9 That's what he's saying, right?

10 **A.** Well, we discussed the draft before.

11 **Q.** That's what he's saying, though, right?

12 **A.** Yes.

13 **Q.** And when he says,

14 "Now, you are not there. You are not  
15 there. Now Lyonya, well, doesn't want  
16 to" --

17 -- he's referring to his desire to have Mr. Gaber  
18 call NPZ. Isn't that right?

19 **A.** Yes.

20 **Q.** And Mr. Gaber won't call NPZ?

21 **A.** No.

22 **Q.** And then he adds,

23 "Now Lyonya, well, doesn't want to.

24 Now you guys, like, need to get out of it.

25 Now it turns out you need the devices now."

1           And the devices he's talking to -- talking about are  
2 the night-vision goggles that NPZ has?

3 **A.**    Yes.

4 **Q.**    And now, suddenly, ATN says we're not going to -- we're  
5 not going to communicate with NPZ and tell them to coöperate  
6 with you?

7 **A.**    There's nothing sudden. I never promised that Lenny will  
8 give a call, really.

9 **Q.**    Okay. Even though Mr. Beker said at one point, if he  
10 doesn't make the call, the deal's off, and you'll pay him the  
11 money back, right?

12 **A.**    Yes.

13 **Q.**    And finally Mr. Beker says, at the bottom of page 15,

14                    "But -- but you have to decide  
15                    yourselves what you want."

16           He's expressing his frustration. Isn't that correct?

17 **A.**    Yes.

18 **Q.**    And it was after that call that Mr. Beker left town,  
19 right?

20 **A.**    That was my understanding.

21 **Q.**    And he was gone for two or three weeks?

22 **A.**    Yes.

23 **Q.**    And while he was gone on September 20th, 2005, you had a  
24 call with Arie Prilik, correct?

25 **A.**    Yes.

1 Q. And during that call -- page 10, begin at line 3,  
2 Mr. Prilik said,

3 "I see. Well, and one more little  
4 question, then. Did you see the draft of  
5 the agreement that I sent, which you may  
6 like or may not like?"

7 He was referring to the draft agreement that was sent  
8 to you on September 2nd?

9 A. Yes.

10 Q. You said, "Uh-huh."

11 And Mr. Prilik added,

12 "As of today, we don't have anything  
13 but oral agreements, then. In order to  
14 have it done right, could I ask you to edit  
15 it; to take out whatever you don't like,  
16 but, like, to put -- to put in writing our  
17 agreement?"

18 He was offering you the opportunity to edit the draft  
19 in any way you saw fit, correct?

20 A. Yes.

21 Q. And you declined?

22 A. Yes.

23 Q. But you what told Mr. Prilik on that day was,

24 "I understand. I spoke about it with  
25 Michael. I believe that it needs to be

1 done one step at a time."

2 Right?

3 **A.** Yes.

4 **Q.** And Mr. Prilik responded,

5 "Yes. One step at a time. Michael  
6 took the first step. And my understanding  
7 was that, after that, you would review it,  
8 and offer your edited version."

9 Correct?

10 **A.** Yes.

11 **Q.** And you never offered your edited version?

12 **A.** No.

13 **Q.** You added,

14 "However, but for the time being, that  
15 which he sent is very difficult to edit."

16 Right?

17 **A.** Yes.

18 **Q.** The point is: You made no effort to edit it?

19 **A.** No.

20 **Q.** And then you told him, page 11, line 22,

21 "I'm not entirely sure. Why do we need  
22 to put everything on a paper?"

23 Right?

24 **A.** Yes. I was asking what this document would be used for.

25 **Q.** And Mr. Prilik responded,

1 "Okay. Not to put everything; but  
2 there was some agreement reached. And one  
3 would like to put it in writing. Take out  
4 everything that you don't like. To save  
5 time, we produced the first draft, so to  
6 speak. If you can, spend a couple of  
7 minutes, and produce your draft."  
8 He's offering to let you, again, rewrite it, or  
9 basically write whatever you thought was appropriate, correct?

10 **A.** Yes.

11 **Q.** And your response was,

12 "But I'm telling you honestly that I'm  
13 uncomfortable to put anything in writing."  
14 Right?

15 **A.** Yes.

16 **Q.** And, once again, Mr. Prilik says, beginning at line 13,

17 "You can take out everything that you  
18 don't like. I don't know what else can be  
19 offered from our side."

20 But again, you declined any offer to -- to add any  
21 terms or change any terms in the agreement, correct?

22 **A.** Right.

23 And the first word there was "Confidentiality." He also  
24 offer to make sure that this is confidential; that it will not  
25 be shown to anyone.



1 Q. Where does Mr. Prilik say that?

2 A. Right there.

3 Q. That's what you think he's saying, when he's saying  
4 "Confidentiality"?

5 A. Yes.

6 Q. Okay. Mr. Prilik adds -- at the beginning of the bottom  
7 of page 1, line 4, and carrying over to page 13, he says,

8 "Well, let's stick to the agreement.

9 We said that we would sign something.

10 Let's sign something. The main points.

11 What you agreed to. What we agreed to. If  
12 you don't like the preamble, take away the  
13 preamble."

14 And Mr. -- and you respond,

15 "Well, okay. Let me think about it;  
16 but I'm not promising anything to you."

17 Right?

18 A. Yes.

19 Q. You're just staying noncommittal. You want the issue to  
20 go away?

21 A. Yes.

22 Q. And you add,

23 "Just as I promised Michael, I did not  
24 promise that I would sign it. I said that  
25 I would review it; but to review it -- to

1 review something -- it means -- as of  
2 today, I don't quite understand why you  
3 guys need it."

4 **A.** Yes.

5 **Q.** Asking --

6 **A.** I was trying to figure that out, because Michael never  
7 told me why, other than that we agreed on it, was it that he  
8 wanted to do with this agreement.

9 And Arie, twice in this conversation, mentions that this  
10 agreement there is to show a money movement, or receipt of the  
11 money in the agreement, which is not even mentioned -- the  
12 money. Mentioning the money. So, to me, all that didn't make  
13 any sense.

14 **Q.** And he says,

15 "it's needed from a purely legal  
16 standpoint between us, so that one would  
17 understand the money movement."

18 Right?

19 **A.** Yes.

20 **Q.** And you point out that money is not mentioned there in any  
21 way, right?

22 **A.** Yes.

23 **Q.** But, in fact, you were invited many times in this  
24 conversation to put whatever terms you thought were significant  
25 in the agreement, right?

1 A. Yes.

2 Q. And you didn't?

3 A. I didn't.

4 Q. That was on September 20th.

5 And your next and last conversation occurred about two  
6 weeks later, on October 4th?

7 A. Yes.

8 Q. And that was a conversation with Michael Beker, right?

9 A. Yes.

10 Q. And in that conversation, you told him -- at page 4,  
11 beginning at line 3, you said,

12 "Arie called me. He said that the  
13 contract is needed again. I don't  
14 understand why it's needed."

15 Right?

16 A. Yes.

17 Q. And you were referring to this conversation that occurred  
18 on September 20th, between you and Mr. Prilik?

19 A. Yes.

20 Q. And Mr. Beker told you,

21 "We didn't talk about it -- you picking  
22 up the phone and calling."

23 He's referring to calling TACOM, right?

24 A. That's what he said here.

25 Q. He said,

1 "You will call anyway. You would call  
2 anyway."

3 Right?

4 That's what he told you before about your call to TACOM;  
5 that you would have called anyway?

6 **A.** That was his perception that he was trying to tell me.

7 **Q.** Okay. He said,

8 "I asked you to review the contract, to  
9 take away what you -- you think doesn't  
10 suit you; to say what doesn't suit you.  
11 And we would move on."

12 Right? He's again saying you could make whatever changes  
13 you thought were necessary?

14 **A.** Yes.

15 **Q.** And you asked him.

16 "Explain why you need it."

17 And his answer was,

18 "It was part of our agreement."

19 Right?

20 **A.** That's his understanding.

21 **Q.** And you added, on the next page -- page 5, beginning at  
22 line 4, you said,

23 "I told you that I wouldn't sign  
24 anything. I went and took the step that we  
25 agreed upon."

1           And when you say, "I took the step that we agreed  
2 upon," you're referring to your call to TACOM. Is that right?

3   **A.**    Yes.

4   **Q.**    And at this point, you're telling Mr. Beker that -- that  
5 you weren't -- you wouldn't sign anything. Right?

6   **A.**    Right.

7   **Q.**    And Mr. Beker pointed out to you -- beginning at the  
8 bottom of page 5, and line 23, he said,

9                        "You haven't called Russia, as we  
10                       discussed, to discuss this with the  
11                       gentlemen upon Lyonya's arrival."

12                      Again, he's referring to NPZ there?

13   **A.**    Yes.

14   **Q.**    (Reading)

15                       "That is to say, you've done  
16                       practically nothing, except you called,  
17                       according to you; called our friends in  
18                       TACOM."

19                      Correct?

20   **A.**    That's what he is saying.

21   **Q.**    Yeah. He's saying that basically, all you've done is call  
22 TACOM, right?

23   **A.**    Yes.

24   **Q.**    Beginning at line 16, he says,

25                       "That is to say, you -- you believe

1           that -- I still don't quite understand you.

2           You -- do you realize that you're now  
3           putting a big question mark on our  
4           agreements?"

5           He's wondering whether or not you guys have any kind  
6           of an agreement at all, right?

7   **A.**   At this point, he doesn't like my options. He wants me to  
8           do more. So that's why he's stating it.

9   **Q.**   And your response is,  
10                  "I can't understand why you need this  
11                  contract."

12                  Right?

13   **A.**   Yes.

14   **Q.**   And he responds again,  
15                  "Because it's part of our agreement  
16                  that you'd have a written agreement."

17                  Correct?

18   **A.**   Yes.

19   **Q.**   And you tell him that,  
20                  "I stopped working on the contract."

21                  That's page 7, beginning at line 3, correct?

22   **A.**   Yes.

23   **Q.**   And -- and Mr. Beker said,  
24                  "That I had nothing to do with it. You  
25                  stopped working on it anyway, without me,

1           that is to say."

2           And what he's saying is: You would have had to stop  
3 working on the contract anyway, right?

4 **A.** To me, it was: You're not doing enough. I'm not going to  
5 pay you anymore.

6 **Q.** Okay. And at the bottom of page 7 he says,

7                       "We reached an agreement with you about  
8 the coöperation. You and I talked that we  
9 would move forward as a united -- further  
10 as a united front, so to speak. There is  
11 no front. There is no unity."

12           In his view, you -- ATN -- were supposed to work with  
13 Newcon to finish this contract. Isn't that right?

14 **A.** You're asking me again to give a view of what -- how I  
15 perceive Mr. Beker's view.

16 **Q.** I'm asking you: Wasn't it your understanding that that's  
17 what Mr. Beker was telling you; that he expected the two of  
18 you -- the two companies to work together to finish the  
19 contract?

20 **A.** It was not about working together.

21           It was about ATN not delivering.

22 **Q.** And you said to him, on page 8, beginning at line 19,

23                       "Explain to me what was your goal,

24                       then, when we were reaching an agreement?"

25           And on page 9, beginning at line 1, he explains to

1 you. He says,

2 "I thought that you and I were reaching  
3 an agreement about coöperation and future  
4 joint activities; that is to say,  
5 addressing TACOM in writing."

6 **A.** I think this is the first time --

7 **Q.** Sorry. I'm not finished.

8 **A.** Okay.

9 **Q.** (Reading)

10 "The presence of written agreements  
11 that you refused. And now, as I understand  
12 it, it doesn't matter what's written there.  
13 What matters is that you don't want to, ah,  
14 either look at it or sign it. It totally  
15 doesn't matter whatever is written there.  
16 Do I get that right?"

17 Mr. Beker told you that he was expecting that the written  
18 agreement that both were going to sign, among other things, was  
19 going to be presented to TACOM. Isn't that right?

20 **A.** Yes, finally, here.

21 **Q.** And again, this is the agreement that he told you you were  
22 free to add any terms to that you thought were relevant, right?

23 **A.** Yes.

24 **Q.** And on page 10, beginning at line 9, you finally tell him,  
25 "Well, it means we didn't understand



1 each other regarding the agreement."

2 Right?

3 **A.** Yes.

4 **Q.** At that point in time, you weren't sure that you guys even  
5 had any kind of actual understanding between each other, right?

6 **A.** Well, because he just point out for the first time that  
7 the agreement was there to show to TACOM.

8 **Q.** You didn't understand that before this conversation?

9 **A.** He never pointed it out.

10 **Q.** So at this point in time, once he brought up this subject,  
11 you're saying, "Gee, I guess we never really had an agreement,  
12 then," right?

13 **A.** In regards to the written agreement, yes, we did not have  
14 an agreement.

15 **Q.** And he went on. He said,

16 "It means that you and I had to  
17 prepare, then, a joint paper to TACOM. You  
18 say I -- I decided -- that is to say, you  
19 decided, alone, to call TACOM. Well, you  
20 decided -- you would have called TACOM  
21 anyway."

22 Again, he's reiterating that, in his view, the joint  
23 agreement was to be presented to TACOM, right?

24 **A.** Here, yes.

25 **Q.** And again, he's telling you that your call to -- your call

1 to TACOM, in his view, was something that you would have done  
2 in any event?

3 **A.** Yes.

4 **Q.** Not pursuant to an agreement with him?

5 **A.** That's what he was saying here.

6 **Q.** And on page 11, beginning at line 16, you said,

7 "And all that we did -- we, per your  
8 agreement, per our agreement, practically  
9 transferred it into your hands."

10 And the "it" you're referring to is the -- the  
11 contract to finish the Bat. Set II phase one contract, right?

12 **A.** Yes.

13 **Q.** And Mr. Beker responded,

14 "Well, like, I don't know. Our  
15 conversation is veering to not -- not so  
16 serious sphere, because you -- you  
17 understand only too well that you could not  
18 continue working; not because you or I  
19 wanted it this way."

20 And he's telling you that, in his view, you couldn't  
21 have finished the contract anyway, right?

22 **A.** Are you asking me what he's telling me?

23 **Q.** Yes.

24 **A.** That's what he's telling me there.

25 **Q.** And -- and you ask him again on the next page, page 12, at

1 line 3. You say,

2 "Explain to me what would have been  
3 your next step, if you were to have such a  
4 letter" --

5 And by "letter," you mean the written agreement,  
6 right?

7 **A.** Yes.

8 **Q.** And he says,

9 "I thought you and I, together, having  
10 all that put on paper, present it to TACOM,  
11 and then fulfill this contract. You get  
12 your stipulated and agreed-upon-with-me  
13 share; but you, having given up your  
14 actions from the very beginnings, it means  
15 Lyonya didn't call Russia. You didn't stop  
16 all that had to be, and -- and so on."

17 Again, he's telling you that his understanding was  
18 that, having reached a written agreement, it would be presented  
19 to TACOM, correct?

20 **A.** Yes.

21 **Q.** And then the contract would be fulfilled, correct?

22 **A.** Yes.

23 **Q.** And you would get your agreed-upon 50 percent share of  
24 your original profits, right?

25 **A.** Yes.

1 Q. The \$75 per unit?

2 But that -- that subsequently, your actions showed that  
3 you weren't interested in following through, correct?

4 A. Correct.

5 Q. Finally, at page 16, Mr. Beker tells you, beginning at  
6 line 6,

7 "I want to let you know once again  
8 that, from my point of view, you violated  
9 all of our agreements with you. That is to  
10 say, you don't want, on principal, to  
11 follow our agreements, in connection with  
12 which I'm just letting you know that I am  
13 getting out of this deal with you, and I'll  
14 continue further at my own discretion."

15 Mr. Beker told you he was done, and he was walking  
16 away from any kind of deal with you. Isn't that correct?

17 A. Yes.

18 Q. Now, shortly after -- well, actually, not shortly after.  
19 On October 18, 2005, you received an e-mail from Mr. Beker?

20 A. I believe that was the date, yes.

21 Q. And I think the jury's already seen it. It was the e-mail  
22 on October 18, in which he told you that he'd tried to reach  
23 you several times over the last two weeks. Do you recall that?

24 A. Yes.

25 Q. And was --

1           **MR. HOWDEN:** Excuse me. Jeane, was that admitted as  
2 part of exhibit --

3           **MS. HAMILTON:** Exhibit 48 is the civil suit.

4           **MR. HOWDEN:** 38 -- isn't it? Oh, 48. I'm sorry.  
5 You're correct. It was part of Exhibit 48.

6 **Q.** Can you take a look at that? And --

7 **A.** Yes.

8           **MR. HOWDEN:** Can you pull that up? It's Exhibit 48,  
9 at 0017. Do you have that?

10 **Q.** And he tells you that he's tried several times during the  
11 last two weeks to get a hold of you, right?

12 **A.** I think it states here, "my secretary" and "my assistant."  
13 Yes.

14 **Q.** Okay. And at the third bullet point it says,

15           "I've asked Mr. Arie Prilik, my V.P.,  
16 to talk to your colleagues at the recent  
17 Night Vision Conference in U.S.A.

18 Mr. Leon Gaber has flatly refused to talk,  
19 which was done in a very impolite,  
20 not-businesslike manner."

21 In fact, Mr. Prilik had approached Mr. Gaber at that  
22 conference. Isn't that right?

23 **A.** Yes.

24 **Q.** And demanded the \$50,000 back?

25           **MS. HAMILTON:** Your Honor, there's no foundation for

1 this line of questioning at this point.

2           **THE COURT:** Well, you may ask him -- you know what  
3 you need to ask in order to lay a foundation.

4           **MR. HOWDEN:** Yes.

5           **THE COURT:** So the objection is sustained.

6 **BY MR. HOWDEN**

7 **Q.** Did Mr. Garber [sic] tell you that he had been approached  
8 by Mr. Prilik at that conference?

9 **A.** Yes.

10 **Q.** And what did he tell you Mr. Prilik said to him?

11 **A.** I don't recall the details, but I think he mentioned  
12 something; that he didn't talk to him.

13           **MS. HAMILTON:** Your Honor, this is hearsay.  
14 Objection on hearsay grounds.

15           **THE COURT:** Elicit what, in fact, was said. Then  
16 you've got a hearsay problem.

17           **MR. HOWDEN:** It's not offered for the truth,  
18 your Honor.

19           **THE COURT:** Well, I'm not so sure. And I don't want  
20 to find out afterwards that, in fact, that is not the case.  
21 Okay?

22           **MR. HOWDEN:** All right.

23           **THE COURT:** Maybe you think it is. Maybe I'll think  
24 otherwise, but --

25           **MR. HOWDEN:** All right. I'll move on.

1           **THE COURT:** I think he said he doesn't know, anyway.  
2 So he's not going to help you out there, I guess.

3           **MR. HOWDEN:** Very good.

4 **Q.** You attended what's called the "Shot Show," in Las Vegas,  
5 in February of '06?

6 **A.** Yes.

7 **Q.** And that's another trade show that includes night-vision  
8 products?

9 **A.** Yes.

10 **Q.** And -- and Mr. Prilik approached you at the Shot Show in  
11 February of '06, didn't he?

12 **A.** He attempted to.

13 **Q.** Yeah. And he loudly and publicly asked you to return the  
14 \$50,000 to him, didn't he?

15 **A.** Yes.

16 **Q.** Nothing secret about his request for the \$50,000?

17 **A.** No.

18 **Q.** Or his announcement that he wanted it back?

19 **A.** No.

20           **THE COURT:** Is that the Shot Show?

21           **MR. HOWDEN:** Shot Show. I think that's it.

22           **THE COURT:** S-h-o-t?

23           **MR. HOWDEN:** I believe that's correct.

24 **Q.** Is that correct?

25 **A.** That's correct.

1 Q. What other kinds of things are exhibited? Weapons, and  
2 weapons systems; things like that?

3 A. Yes.

4 Q. Is "shot" an acronym, if you know?

5 A. Sportsmen's and Hunter Outdoor --

6 THE COURT: We can figure it out.

7 THE WITNESS: Yeah, something. "Trade," or  
8 something.

9 THE COURT: I just wanted the record to be clear, if  
10 it was "Shock" or "Shot."

11 THE WITNESS: No. Shot Show. S-h-o-t.

12 BY MR. HOWDEN

13 Q. And in this e-mail, Mr. Beker demanded that the \$50,000 be  
14 repaid to him. Isn't that correct?

15 MS. HAMILTON: I'm sorry, your Honor. What e-mail?

16 MR. HOWDEN: The e-mail that --

17 THE COURT: This is the exhibit that's --

18 MR. HOWDEN: Yeah.

19 THE COURT: -- being exhibited now, correct?

20 MR. HOWDEN: That's correct, your Honor.

21 THE COURT: 48.

22 BY MR. HOWDEN

23 Q. He demanded the repayment of the loan; of the 50 --

24 A. He wanted the loan back. Yes.

25 Q. And he called it a "loan" in this document?



1 A. Yes.

2 Q. And he copied his lawyer, Mr. Alexander Gertsburg, on this  
3 letter?

4 A. Yes, I believe so.

5 Q. And then, on November 8th, if you turn to page 0019 of  
6 Exhibit 48, Mr. Beker sent you a letter by registered mail.  
7 Isn't that correct?

8 A. Yes.

9 Q. And again, he referenced it as "loan refund." Isn't that  
10 correct?

11 A. Yes.

12 Q. And again, he demanded the return of the \$50,000, right?

13 A. Yes, and interest.

14 Q. And he again copied his lawyer, Mr. Gertsburg, correct?

15 A. Yes.

16 Q. And then, on December 12th, the next month, his lawyer,  
17 Mr. Gertsburg, sent your lawyer, Mr. Streeter, another demand  
18 letter. That's at 0020 in Exhibit 48. Do you see that?

19 A. Yes.

20 Q. And in that demand letter, again, Mr. Gertsburg sought the  
21 return of the \$50,000, right?

22 A. Yes.

23 Q. And in this letter, he went on. He went on at some length  
24 to describe the \$75 per unit that Newcon had agreed to pay to  
25 ATN under its deliveries to finish the -- the Bat. Set II

1 contract, correct?

2 **A.** Yes.

3 **Q.** It included the total amount that would be due, if and  
4 when the agreement was completed, which was \$225,000, correct?

5 **A.** I think so.

6 **Q.** Now, during the course of your discussions with Mr. Beker,  
7 you told him that your profit margin on the Battalion Set II  
8 contract for each pair of goggles was approximately \$200 per  
9 pair, right?

10 **A.** Yes.

11 **Q.** And his proposal was to pay you less than half of that  
12 margin -- \$75 per pair of goggles -- in connection with what  
13 I'll call your "coöperation" with Newcon, right?

14 **A.** In connection with ATN nonparticipation.

15 **Q.** Right. And -- and so the way -- you proposed to  
16 Mr. Beker -- you agreed with Mr. Beker that you would accept  
17 less than half your expected profit on your contract with ITE,  
18 and instead, would take \$75 per unit, and -- and do nothing,  
19 right?

20 **A.** That was the proposal. And I was going along with that  
21 proposal.

22 **Q.** Yeah. And -- and why in the world would he expect a  
23 businessman like yourself to forgo making \$200 a unit, and  
24 accept \$75 a unit instead?

25 **A.** Because he believed that my understanding -- that he

1 wanted ATN to get out of the phase one, and that's what he was  
2 paying for.

3 **MR. HOWDEN:** Okay. Your Honor, this might be a good  
4 place to break.

5 **THE COURT:** Well, it's the right time in terms of the  
6 hour. Is it the right time in terms of completion of your  
7 cross-examination?

8 **MR. HOWDEN:** I will probably take at least another  
9 half an hour with him.

10 **THE COURT:** And overnight, can you shorten it?  
11 Rather than have work -- you know, the examination expand?

12 **MR. HOWDEN:** I will make every effort. I will  
13 shorten it.

14 **THE COURT:** Let's keep it to a half an hour.

15 **MR. HOWDEN:** Very good.

16 **THE COURT:** We've got to do that, because we still  
17 have to hear from Mr. Osterhoudt, who might have a few  
18 questions.

19 **MR. OSTERHOUDT:** Several days, your Honor.

20 **THE COURT:** He's joking, I think. In my book, he's  
21 joking, because he told me he was going to be much, much  
22 briefer, and let Mr. Howden do the laboring oar this time.

23 So keep it to half an hour, so we can then move on  
24 Mr. Osterhoudt. And then, of course, we have redirect, you  
25 know, and -cross. And who knows how long that's going to take,

1 right?

2           So you will have occupied most of our week,  
3 Mr. Rocklin; I know not at your choice, but at any rate, thank  
4 you very much, ladies and gentlemen, for your patience. And  
5 have a very good afternoon and evening. And we'll see you  
6 tomorrow morning at 8:30. And thank you for being on time,  
7 again, and being so attentive. And we appreciate it, because I  
8 know it's gets a little tedious after a while.

9           (Jury out at 3:15 p.m.)

10           **THE COURT:** And, Mr. Rocklin, I'll remind you that  
11 you are not to discuss your testimony with any other persons.  
12 And that includes not only all of the other witnesses, but I  
13 mean, members of the prosecution team we talked about earlier.  
14 And we'll see you tomorrow morning at 8:30. Thank you.

15           **THE WITNESS:** Okay.

16           **THE COURT:** And so I really need to keep it to --  
17 that's why I did it in front of the jury: To keep you to about  
18 a half hour.

19           **MR. HOWDEN:** I agree, your Honor. I will finish in a  
20 half an hour.

21           **THE COURT:** I'm sorry we started a little bit late.  
22 Couldn't be helped.

23           And how much time are you going to need,  
24 Mr. Osterhoudt?

25           **MR. OSTERHOUDT:** Well, I have to go over what's been

1 done, but I don't think -- I don't think an hour. I think less  
2 than that.

3 **THE COURT:** Okay. Good.

4 And then you have some estimate as to recross or  
5 redirect, rather? Because I gather that, you know, you have a  
6 pretty good idea of how much more is going to come in. I don't  
7 know what it is specifically, but --

8 **MS. HAMILTON:** Well, our hope is to keep it under two  
9 hours, your Honor, if not less. I mean, I can't guarantee it.

10 **THE COURT:** Zero in on what needs to be zeroed in on,  
11 and then move on.

12 **MS. HAMILTON:** Absolutely. Our goal is to let Mr. --

13 **THE COURT:** Don't open too many doors, so that we can  
14 have a brief recross.

15 **MS. HAMILTON:** We're trying to keep our house air  
16 shut.

17 **THE COURT:** Then who's going to be your next witness?  
18 I don't know if we'll get to that witness tomorrow or Friday.

19 **MS. HAMILTON:** Currently, Special Agent Haynie.

20 **THE COURT:** Currently is he on call?

21 **MS. HAMILTON:** Yes, your Honor. He's been here since  
22 Monday.

23 **THE COURT:** Well, at least he's had decent weather,  
24 for the most part.

25 **MS. HAMILTON:** He's here from Portland, so I think

1 he's appreciating it more.

2           **THE COURT:** It's not like coming from Minnesota or  
3 something.

4           **MS. HAMILTON:** Yeah. Detroit.

5           **THE COURT:** Detroit. Okay. So we'll see you  
6 tomorrow morning at 8:30.

7           **MR. HOWDEN:** Thank you, your Honor. Very good.

8           **THE COURT:** I started to say 7:30. I must be  
9 thinking like Judge Alsup, huh?

10           **MS. HAMILTON:** Actually, your Honor, if I could just  
11 bring a logistics question, I was trying to figure out the  
12 quickest way to get through our questions regarding the  
13 transcripts that will come up in redirect. And one of things  
14 we can do is to provide to the jury, now, the copies of the  
15 transcripts, so that, instead of having to read entire  
16 portions, just -- we could possibly cite the witness to that  
17 section. The jury could read that while the witness reads it,  
18 and then zoom in on the particular question; but that way, the  
19 context has been set.

20           And I don't know if that's something that we could --  
21 we can consider, or is it just better to read all of the pieces  
22 back into the evidence again? I mean, obviously, on the  
23 record, we'd cite, "Starting at page this, line this, ending at  
24 page this, line this."

25           **MR. HOWDEN:** My only concern is that -- whether or

1 not that actually is going to save time. I'm not sure that it  
2 will.

3 **THE COURT:** What you may get with that -- I mean, I  
4 see what you're doing, and it does make some sense.

5 **MS. HAMILTON:** Right.

6 **THE COURT:** But you have fast readers, and slow  
7 readers. So when you start to then say, now, to ask the  
8 question, one juror say, you know, or couple have said, "I  
9 haven't finished reading it." So then we've done that kind  
10 of -- you know, in other instances, where we've had to have the  
11 jurors read something.

12 So I think it's -- just try to speed it up, is all.

13 **MS. HAMILTON:** I'll read fast.

14 **THE COURT:** Have those pages quickly premarked, and  
15 everything, and then just zero in on them. Okay?

16 **MS. HAMILTON:** Yeah. Sounds good. All right.  
17 Thanks, your Honor.

18 (Whereupon at 1:30 p.m., further proceedings  
19 in the above-entitled cause was adjourned  
20 until Tuesday, January 20, 2011, at 8:30 a.m.)

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I N D E X

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Wednesday, January 19, 2011